SUPREME COURT, U. S.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI,

Petitioner,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND,

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the Supreme Court of the State of California

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Attorney for Petitioner, and, as amicus curiae, "America's Unofficial and Uncompensated Ombudsman" (as such, de facto, for 58 years and recognized as such by California's Governor's office, Speaker's office and the press), "Lincoln's Chief Aide" in the nation (by virtue of parenthood of the idea), "Candle Lighter" and "Champion of Justice and Scientific and Economical Government With a Heart".

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Joseph I. Moreali, a destitute admittedly industrially injured workman, born in San Jose, California, on December 1, 1923, and still a citizen resident thereof, able to afford the printing of only a skeleton petition herein through the charity of his attorney (who had to borrow $350.00 on his BankAmericard

for the $100.00 filing fee herein and $250.00 for printing the Petition), on behalf of himself and 7,000,000 other California workmen, with their 8,000,000 dependents, or a total of 15,000,000 human souls, deprived of their constitutional rights by the decision herein complained of, prays, in this group or class test case, that a writ of certiorari be issued to review the final decision of the Supreme Court of the State of California, refusing to hear or consider their plea for justice.

THE CASE IN PROPER PERSPECTIVE

This case, heralded by the Official Reports of California Compensation Cases (C.C.C., April, 1968, Vol. 33, No. 4, Pages 203-205), edited by Warren L. Hanna, veteran publisher and author of Hanna on Workmen's Compensation, as a class test case "in which a proper foundation has been laid for an appeal as high as the United States Supreme Court," complies with all legal formalities for such an appeal and had all federal questions involved raised at the initial hearing of the case at the Referee level.

The case is unique in the history of American jurisprudence in that:

1. It is the only case in the land reaching high court levels in which a decision on factual issues was made WITHOUT ANY FACTS WHATSOEVER AS A BASIS and from "OUT OF THIS WORLD" evidence which the Referee who approved it characterized as "ESOTERIC SOLELY" and the insur-

ance carrier's doctor who made it openly admitted under oath in court, as well as in his 5-times characterized written "decision" itself, that the man's proved and adjudicated industrial injury was non-industrial in the eyes of God as based on "ASSUMED OMNIPOTENCE" on his part SOLELY, "WITHOUT ANY CONSIDERATION WHATSOEVER" to the laws of man written into a constitutional amendment by the people Abraham Lincoln stated we are a government "of, by and for," enacted by our State Legislature in implemented form and construed by our State Supreme Court in a unanimous decision written by its Chief Justice 33 years ago.

2. It was automatically rubber stamped as coming from God, and thus binding on 15,000,000 human souls He rules in California, by the Referee for the respondent Board, the Board itself, the State Appellate Court and the State Supreme Court. (Out of the great respect we have for our higher courts in California, we must state that they doubtless were misled by the respondent Board's attorneys, who in their ANSWER in the court proceedings pulled a foul punch by injecting secret evidence which the Referee and Board admittedly did not consider, as proved conclusively by their use of the term "SOLELY," in describing the evidence on which they acted, as "ESOTERIC".)

3. It is the only case in the history of America which will be taken from our nation's highest official court, if it also serves only a rubber stamp function in our democracy, to the COURT OF LAST RESORT—the people themselves—or, in the alternative,

to those people as the supreme example of American justice as embodied in the noble words engraved in enduring marble on the stately edifice in which our respected Supreme Court—the bulwark of democracy in America—is housed, of "EQUAL JUSTICE UNDER LAW."

The first two points of uniqueness are self-explanatory. The third requires further elucidation to be understandable, and believable. Here it is.

On the first of the year, as I conclude my half century of private and public service as an Ombudsmanic attorney, I am turning the private law practice I have built up in the last quarter century in my home town of San Jose, California, from which 16 of among the most prominent attorneys in town have graduated and two remain, over to the two of my three sons who are already admitted to the bar, and start my seventh nation-wide tour as America's now officially recognized unofficial and uncompensated Ombudsman I have been *de facto* for 58 years, in order to show "increased devotion to the great unfinished task remaining before us" (hidden from the American people for 105 years) of making "of, by and for" democracy work *PROPERLY*, so that it "shall not perish from the earth."

That democracy does not function properly when a partisan doctor, for personal gain, blasphemously puts on the cloak of God and writes what he terms a "decision" officially ruled binding on 15,000,000 people in the nation's most populous State by that State's two highest courts that topples its vaunted workmen's

compensation system, in first place for the past half century since it excelled Wisconsin's in the eyes of the textbook writers, to the very bottom place of fiftieth, since no other State in the Union could possibly have such an unsound, confused, unworkable and emasculated system of workmen's compensation as the decision here in question has reduced California's to by abolishing the basic rule of every workmen's compensation law in the country that "industry takes the workman as it finds him and that any 'lighting up' of a pre-existing condition in a body is fully compensable and subject to full medical treatment to restore to pre-injury status, with no pro-rating of temporary disability and/or medical treatment," which has been the law in California for 33 years since the respected and honored Chief Justice Waste and his six colleagues so declared it in *Tanenbaum v. Industrial Accident Commission,* 4 Cal.2d 615, 617 (1935), which decision is binding on this honorable court under the doctrine enunciated in *Supreme Lodge, Knights of Pythias v. Meyer,* 265 U.S. 30, 32, 33, 68 L. Ed. 885, 887, 888, 44 S. Ct. 432 (1924), as follows:

> "Under the settled rule of this court, declared so frequently and uniformly as to have become axiomatic, we must accept this decision of the highest court of the state, fixing the meaning of state legislation, as though such meaning had been specificaly expressed therein."

Entitling the 15,000,000 people for whom I speak as their Ombudsman to win their case before this

Honorable Court regardless of what reasoning actuated our State Supreme Court to use the dreaded words *"Hearing denied"* that condemned hundreds of thousands if not millions of people to darkness as they spend the most productive years of their lives paying off dishonored medical bills (the innocent victim of the malfunctioning system's fury in the instant case being still billed $148.50 by the doctor who posed as God and wrote the decision (sanctified by a referee, three board members and ten of our highest State jurists) herein complained of in the illuminated light of his "assumed omnipotence," six years after the industrial injury incapacitated the industrially injured worker and the 6,000,000 workers in the off-the-job disability program picked up the tab for $2,072.00 in hospitalizations and the California Physicians Service (Blue Shield) paid the $1,005.00 in surgery bills under group insurance the man was fortunate enough to have to avoid a two years' stretch at the debtor's grindstone or a six months' stretch on the taxpayers' charity rolls, with his family, to help *CREATE* poverty in California), and standing out in bold relief as a lighthouse of safety for California's teeming millions, is the landmark decision of this Honorable Court in the California based case of *Richfield Oil Corporation v. State Board of Equalization,* 329 U.S. 69, 84, 67 S. Ct. 908, 89 L. Ed. 1209 (1946), which phrases the winning words thusly:

> "That construction, *being a matter of state law,* is binding on us. But it is *not* determinative of the question whether the tax deprives the tax-

payer of a FEDERAL right. That issue turns not on characterization which the state has given the tax, *but on its operation and effect.*" See *St. Louis S.W.R. Co. v. Arkansas,* 235 U.S. 350, 362, 59 L.Ed. 265, 271, 35 S.Ct. 99, *Kansas City, Ft. S. & M.R. Co. v. Botkin,* 240 U.S. 227, 231, 60 L.Ed. 617, 618, 36 S.Ct. 261. (Emphasis added.)

We thus project the binding effect of United States Supreme Court wisdom one point further, so as to permit this high court to overrule California's highest court's, in effect, repudiation of its basic polar star doctrine of *Tanenbaum* (whether intended or by misdirection due to the "below the belt" evidence the State attorneys sneaked in on us, we have no way of telling, since our only guide to the truth in this regard is the fatal two words of our highest State Court of "Hearing denied," which doomed 15,000,000 people to reliance on mortgaged homes, furniture and/or cars and/or on charity and/or government Aid to Needy Disabled, and Aid to Needy Children and/or government medical treatment for from fifty to one hundred per cent of their employer-paid-for workmen's compensation insurance the decision here in question has deprived them of, depending on the degree of "esotericism" of the insurance carriers' doctors who are to write the decisions for the referees, board and the courts for automatic approval, without regard to the facts, if the decision is to be allowed to remain law and the precedent or guiding star of all future referees and board members.

Cannot the honorable justices of this high court see the crystal clear malfunctioning of democracy that is inherent in such a situation?

Or take the situation as to juvenile justice in America this Honorable and Honored Court tried so hard to remedy in the Gault decision of last year, without reaching its *main* defect, namely, a step-parent as *parens patriae* or *in loco parentis* instead of a real parent so as to ensure automatic built-in or in-built justice in the operation of the entire system. Abraham Lincoln's long dead and buried Jury Address comes to life as to equal justice for children too, as well as the equal justice for industrially crippled adults for whom we plead to the nation's highest court. It was typically Lincolnian and to the point, as follows: "I believe this young man I am defending is guilty. I *think* he stole the money. But I am not *SURE*. Are *YOU?*" We Lincoln Aides who have inherited his ideas and ideals as well as his words are to make these hallowed words ring from the rafters of every hall in America until they free her 60,000,000 children from the yoke of cattle, from the animal or *civil* rule for cattle or chattels of "preponderance of evidence" so as to throw upon them, our most precious possession, the cloak of innocence our adults wear, which the bitter cold of guilt cannot penetrate unless "beyond a reasonable doubt and to a moral certainty," unless *"SURE."*

In this manner can Abraham Lincoln become the "GREAT EQUALIZER" as well as the "GREAT EMANCIPATOR," by the work of his aides dedi-

cated to completing the great unfinished task he laid out for us.

To this end he has given his chief aide (by virtue of parenthood of the idea) a Lincolnian beard, just 2½ months old, inspired, as in his case, by a little girl who had just visited the Lincoln Theatre in Disneyland and suggested that if his chief aide in this great task in this uncharted field would grow a beard he would look just like Lincoln. He does, to the extent of an "astounding" resemblance in the opinion of bench and bar at San Jose, "more like him than he did himself," according to a visiting attorney, and "enough like him to be his twin brother," according to another judge of resemblances, and enough like him to gain a 10-minute interview on his movement on the air on KPIX (Channel 5 at San Francisco) and make the local press and portrait studios as San Jose's "Abe," which means that he will have access for his cause of better government, promoted by his non-profit, non-partisan and non-sectarian General Welfare Federation of America, Inc., 150 Congressmen (75 Democrats and 75 Republicans) helped him incorporate at the nation's capital in 1937 and the national magazine, the General Welfare News Advocate he has edited for those 31 years, to TV and newspapers in every town into which he goes to organize a "LINCOLN AIDE CLUB," "CANDLE LIGHTERS CLUB," "TORCH BEARERS CLUB" or "OMBUDSMAN CLUB" (whichever the smeller of the roses prefers) to start, particularly among the eager-for-challenge college students of America, college-

trained women who are getting bored with bridge, men, women and children in all walks of life who want to "do something for their country," a movement for good government, for sound and efficient government, for scientific and economical government with a heart, to combat the hippie movement for anarchy in government, with its free love, free pot, no work and no respect for law and order so as to gutterize the youth of our land in the lusts of the flesh when the spirit of freedom, the spirit of achievement in government, the spirit of equality based on the "one blood God made all nations of men," the spirit of the real democracy Lincoln inspired in us, should prevail in this great nation of ours.

Such is our vision, our long-range planning for America, our vista for the future. Such is our idea, whose "time has come," so is "stronger than all the armies," according to Victor Hugo. How soon we will be able to achieve it, even with our "beard in the door" everywhere, including the legislative halls at Sacramento, will depend a lot on the action of this high court in this class suit on one of our closest to our people acts, which by precedent will make its influence felt in every part of the nation, testing, in one large measure, in one large field of human rights, whether our "nation, or any nation so conceived and so dedicated, can long endure." It cannot if those millions forming the great bulk of our people in the nation's most populous State—the working men and women and their dependents—are to find themselves in the bread lines of poverty when deprived of the

means of livelihood when industrial injury strikes and thrown onto the industrial scrap-heap we Ombudsmen of the Hiram Johnson era thought we had abolished forever in California, all because of two words from our high court in California of "petition denied," which, if reiterated by the higher court of the nation to which we are appealing on bended knee for relief from the intolerable situation that has developed from the emasculation of California's most precious statute which protects those willing to work to help build rather than destroy America, will truly raise havoc in our "Great Society" or "Creative Society" that creates the very poverty we are trying to destroy.

So much for the perspective from which we ask this Honorable Court to view the landmark case we are bringing before it.

THE CASE ITSELF

As to the case itself, we present the following, not as a "cry in the wilderness for justice," as was our similar case on the same issue in this field of nine years ago (*Charles Mannina v. Industrial Accident Commission of California,* No. 578, October Term, 1959), but as a case for EXACT JUSTICE, on EXACT FACTS and EXACT LAW that mandate it.

OPINIONS BELOW

In the Supreme Court of the State of California
in bank

Petition for hearing denied.

Traynor
Chief Justice

Certified as filed May 9, 1968.
William I. Sullivan
Clerk

In the Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 25,257

BY THE COURT

The petition for writ of review is denied.

Filed April 10, 1968
Shoemaker, Presiding Justice.

Before the Workmen's Compensation Appeals Board
State of California
Case No. 62 SJ 8761

Joseph I. Moreali,
Applicant,
vs.
Lowell Foods, Incorporated, and State Compensation Insurance Fund,
Defendants.

ORDER DENYING RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration on file herein and the contents of the Referee's Report with respect thereto. Based on our review of the record, and for the reasons stated by the Referee, whose report we herewith adopt and incorporate,

It Is Ordered that said Petition for Reconsideration be, and it hereby is, Denied.

Workmen's Compensation Appeals Board
Hale Ashcraft

I concur.
A. G. Boardman
Robert J. Calvert
Deputy

Dated and filed at San Francisco, California
Dec. 5, 1967

Case No. 62 SJ 8761

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Due Date: Nov. 21, 1967

For the history of this matter the Panel is referred to the Opinion on Decision dated October 9, 1967, and to the prior documents noted in Paragraph 2 thereof.

The present petition, in summary, is from a finding that no good cause was shown to reopen, 4 years later, a claim in which it was found certain disability and need for medical and surgical care was not the proximate result of a minor injury to applicant's foot.

As the Referee has earlier stated, he wholeheartedly agrees with the basic premises of applicant's attorney's arguments. Injury may be by "lighting up" of a previously non-disabling condition, and in certain cases applicant's testimony, especially as to feeling pain and its amount, may override any medical opinion. However, as to causation of disability, the Referee disagrees, especially when the question is an esoteric one, solely to be answered by an expert, and not a question of fact finding.

As to the present case, again the weight of the reasonable evidence is contrary to applicant's position. The operating doctor knew for what he operated, and advised the employee *before the operation,* that it was not be reason of his injury. The so-called new evidence (4 years in applicant's possession before he filed his petition to reopen, incidentally, was not suf-

ficient to change either the doctor's opinion nor necessarily, the Referee's.

Nothing further will be said in regard to the Petition itself. Enough was said in the Referee's memorandum following the first Petition in 1962, to which the Board's attention is again drawn.

Recommendation:

It is respectfully recommended the Petition be denied.

Alvin L. Dove, Referee

Filed Nov. 17, 1967

Applicant's attorney requests the file not be reviewed until transcript is available (transcript has been prepared). A. Dove

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SUPPLEMENTAL FINDINGS AND ORDERS

Petition to reopen having been filed and the matter having been regularly heard and submitted before Alvin L. Dove, Referee, said Referee finds and order as follows:

FINDING OF FACT

1. Good cause to reopen has not been shown.

ORDERS

It Is Ordered that applicant's Petition to Reopen, filed herein June 15, 1967, be, and it is hereby denied.

It Is Further Ordered that applicant take nothing further by reason of his claim filed herein.

It Is Further Ordered that the lien claim of the Department of Employment, filed herein June 15, 1967, be, and it is, hereby denied.

It Is Further Ordered that the lien claims of California Blue Shield, filed herein October 3, 1967, be, and they are, hereby denied.

Alvin L. Dove, Referee

Filed Oct. 16, 1967

Alvin L. Dove, Referee
October 9, 1967

Case No. 62 SJ 8761
Injury: June 16, 1962

OPINION ON DECISION

Butcher, born on December 1, 1923, sustained injury to left foot arising out of and in the course of his employment June 16, 1962.

Following hearings, on March 29, 1963 it was found that no time over seven days was lost because of the injury, and that disability following an operation of July 31, 1962 was not the result of this injury. Further medical treatment request was denied. Reference is made to the Findings and Award and Order on March 29, 1963, to the accompanying Report of the Referee on Decision, dated March 25, 1963, to the Report of Referee (summary of testimony) dated February 19, 1963, to the Referee's Report and Recommendation on Petition for Reconsideration of April 30, 1963, and the Panel's Opinion and Order

on Reconsideration filed May 15, 1963. The District Court of Appeal denied hearing September 6, 1963.

As for the present proceeding, under date of June 15, 1967, the last possible date before this Appeals Board's jurisdiction would be lost, applicant filed a Petition to Reopen. In essence, it alleges "newly discovered evidence" in the form of early X-rays, further alleged to prove that the operation of 1962 was for the results of injury, not prior condition as testified to by Dr. Josephson, the surgeon who operated.

There have been two further lengthy hearings, and voluminous documentary evidence has been filed as well. In summary, the Referee is of the opinion applicant has not shown good cause to reopen and his Petition to Reopen must be denied. Reference is again made to Dr. Josephson's testimony as given on September 6, 1967, after being allowed to review the so-called "new evidence."

If for no other reason, the Petition would have to be denied by reason of Laches. Applicant was aware of the early X-rays shortly after his hearing of 1963, yet waited until June 1967 to Petition to Reopen.

It will be found that applicant has not shown good cause to reopen. His Petition to Reopen, filed June 15, 1967, will be ordered denied and it will be further ordered that he take nothing further as a result of his claim herein.

Lien claims must be denied.

Alvin L. Dove, Referee

THE "DECISION" ITSELF —SO FAR DEEMED SACROSANCT AS COMING FROM GOD HIMSELF

"It is felt that this individual should proceed with repairative corrective surgery aimed at helping the defects as described above and it is also felt that these should be carried out at the patient's expense as they are in no way connected with his recent contusion . . .

"We have to call these educated guesses because it took me many years . . .

"As far as I was concerned, I did not even consider the question of trauma lighting up his particular condition . . .

"Trusting that these comments will help in this rather complicated situation whereas the Doctor is dealing with a disabled person and must assume sufficient omnipotence to be able to ascertain the component industrial and nonindustrial factors of this particular disability much against his better judgment and desire, I remain,

Very sincerely yours,
J. B. Josephson, M.D."

JURISDICTION

1. Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257, which provides in part:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (3) By Writ of Certiorari * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * *."

2. The following cases holding that the United States Supreme Court may review a decision of a State Supreme Court construing a state statute by which construction it is contended a party to the proceeding is denied a right guaranteed by the Federal Constitution, sustain the jurisdiction of this Court:

Cudahy Co. v. Parramore, 363 U. S. 418, 44 S. Ct. 366, 68 L. Ed. 366;

Dahn Ke-Walker v. Bondurant, 257 U.S. 282, 42 S. Ct. 106, 66 L. Ed. 239;

Eureka Pipe Line Co. v. Hallanan, 257 U. S. 265, 42 S. Ct. 101, 66 L. Ed. 227;

St. Louis etc. Railway Co. v. Wynne, 224 U. S. 354, 32 S. Ct. 493, 56 L. Ed. 799.

3. The Supreme Court of the State of California is the highest Court of the State.

4. The judgment of which review is sought is a final judgment of the Supreme Court of the State of California.

5. The judgment herein sought to be reviewed was filed on May 9, 1968.

6. The Federal question of substance which is involved is that the guarantee of equal protection of the law and due process of law, as contained in Amendment XIV, Section 1 of the Federal Constitution, has been denied to your Petitioner and 7,000,000 other California workers (and their 8,000,000 dependents) who may sustain hidden injuries and are deprived of their just rights under these constitutional protections *"SOLELY"* by "ESOTERIC" evidence, as adjudicated here, from referee to highest court, by *"OMNISCIENCE"*, again "SOLELY", as adjudicated here, from the deciding doctor to the "AMENS" of the Referee, the three Board members, the three Appellate Court Justices and the seven Supreme Court Justices, which all the reviewers presumably considered "substantial" evidence sufficient to justify such acquiescence as "due process" and "equal protection of the laws" with those workmen who sustain visible injuries and have their rights determined by "TRIERS OF THE FACTS" rather than "TRIERS OF THE GUESSES", by occultism, by surmise, by conjecture, by hypothesis, or, in other words and synonyms, by just plain unadulterated "guesswork" evidence that has no place in a judicial system based on "EXACT" justice and "EQUAL" justice to *ALL* men, especially when their brothers in the same class or group who sustain injuries visible to the naked eye or x-ray film are given the complete protection of the Workmen's Compensation Law, the Constitution of

California and the Constitution of our Nation, those subject to the "guesswork" or "witchcraft" rule getting no justice at all, as here.

THE QUESTION PRESENTED

Has due process of law and the equal protection of the laws been denied your Petitioner and those of the 7,000,000 California workmen (with their 8,000,000 dependents) who fall into his category of being unfortunate enough to sustain, instead of injuries that are visible or x-rayable, which bring automatic justice to the bereft-of-income family under our special Constitutional Amendments of 1911 and 1918, and the Workmen's Compensation Law implementing them (for the express protection of *ALL* workmen injured in industry and their dependents), hidden or invisible injuries that medical science cannot measure, evaluate or penetrate, which bring no protection whatsoever to the industrially felled family, as here, and which "of, by and for" the people provisions become "as sounding brass, or a tinkling cymbal", in other words, is workmen's compensation just for the one per cent of our working population who have justiciable and adjuster level cases in the visible injury field and to be wiped off the statute books and sacred parchment pages written in blood, sweat and tears of our ancestors as to the other ninety-nine per cent of 15,000,000 people who fall within the class the contents of whose skin God has hidden from view, as in the typical guinea-pig case before us, which if it falls to the

steel hammer of "Writ denied" instead of the uplifting hand of the Goddess of Justice who has compassion for those thrown by the wayside to starve on employer-public thirty pieces of silver they cannot eat because the moneychanger in the temple of God's noblest creation is even allowed to keep them when it deprives the family of the industrial compensation and medical treatment they should have brought, will doom 15,000,000 of his fellow human beings to a future of utter darkness in the nation's Golden State where greed for gold is king and the rights of the "common man" Lincoln said God must have loved since he made so many of him are governed from on high by false gods of "assumed omnipotence" who will, for all time to come, not only write the decisions for the workers of California and their dependents, be they children of one or grandmothers of ninety-one, but make them stick, as here?

CONSTITUTIONAL PROVISIONS INVOLVED

This case presents the question of the rights of those 15,000,000 human souls pleading with their highest court for justice, including the nominal petitioner, under the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment of the Constitution of the United States (Amendment XIV, Section 1):

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State in

which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

PRESENTATION AND ARGUMENT

The facts in this case are simple. A 38-year-old butcher, entitled to the above quoted rights of citizenship by virtue of birth in and continual residence in San Jose, stubbed the big toe of his left foot on June 16, 1962, while working, so as to aggravate or "light up" a 13-year totally quiescent and totally asymptomatic bunion condition so as to "cause immediate swelling and a great deal of pain," according to the carrier's doctor who rendered the decision that such pain and swelling was non-industrial since he, in his self-proclaimed "omnipotence," decreed that it would have come at that *exact moment* had the industrial trauma not occurred, since the big toe was so subluxed that it lay "under the second and third toe" and was ready to disable the worker although it had caused him no trouble whatsoever in the 13 years since it was operated on and seemingly cured for all time to come. Believe it or not, that self-proclaimed "omnipotent" guess received the blessing and "amen" of the referee, three board members and ten justices of our higher courts, even after we brought into the hearing chambers of the administrative agency two

X-rays of the foot proving that 30 days before that doctor operated on the toe, it was in practically normal position and had not deteriorated or subluxed in one iota since a previous X-ray of three years before (taken because of a broken little toe on the same foot) proved this in black and white, as any Justice of this Court can see with his own eyes from the X-ray (Exhibit A) and the medical comparison of the two X-rays (Exhibit B) attached hereto and made a part hereof. Instead of citing the sacrosanct doctor to the Grand Jury for deliberate and wilful perjury to bolster up his unsupported, money-hungry guess that the non-deteriorating toe had deteriorated to the point of non-industrial disablement at the very moment of industrial trauma, and to justify an unnecessary operation to correct an alleged subluxation another doctor had to restore to pre-operative position, the referee, and board and justices, swallowed his specious excuse for his perjury that a big toe, like a big finger, can be "flexed" from its "static" position to a "dynamic" position, which any one of the thirteen reviewers could have discovered is an absolute *impossibility* by removing his shoe and trying to so flex his own toe with no muscles or tendons to thus move it sideways. Thus the X-ray-proved fraud and perjury of the doctor, in the eyes of the State reviewers, so bolstered up his omnipotent self-admitted "guess" that the race between the two-X-ray-disproved deterioration and the industrial trauma ended in a draw, so as to be a shining example for all adjusters, referees, board members and high court justices for all time to

come in the future in determining the rights of 15,000,000 people in this hidden injury field, the official report, in the monthly edition of *California Compensation Cases* (Vol. 33, P.203, No. 4, April, 1968) already heralding it as a "GROUP TEST CASE," *approved by our State's two highest courts,* with this summary in bold type: "EVIDENCE—EXPERT—MEDICAL EVIDENCE IS ESSENTIAL, AND WHERE UNCONTRADICTED IS BINDING, WHERE THE ISSUE OF INDUSTRIAL CAUSATION OF A DISABILITY DEPENDS ON MATTERS WITHIN THE EXCLUSIVE KNOWLEDGE OF EXPERTS TRAINED IN A SCIENTIFIC SUBJECT." (Will this Honorable Court also add its approval to this insane rule that belies judicial notice of the fact that an M.D. does not make a mortal a god so that, *forever after,* not only in California, *but throughout the nation,* the decision-writing in *ALL* these "HIDDEN INJURY" industrial cases (which comprise *ninety-nine per cent* of them, since visible injuries pose no judicial problem) will be left to the men in white robes instead of those in black robes, who will be transformed thereby into mere rubber stamps in "AMEN" adulation at the feet of Deity?)

Forgotten in this new cult of idol worship on the part of the State officials involved, administrative and judicial, that now threatens the entire *nation,* if its highest court approves this made in the heavens but based in Hell justice, is the toppled rule of our revered Chief Justice Waste of the days of Tanenbaum

and his six learned associates on our State's highest court, of 33 years ago, that it didn't make a particle of difference what the "omnipoent" doctor "guessed" in this regard, for the adjudicated fact of industrial trauma 'lighting up' the pre-existing condition, whatever it was, *spoke for itself,* under the basic doctrine of judicial notice, and spoke both LOUD and CLEAR if we are to have "down to earth" justice in this State, and said for all to hear: "All else is *immaterial. Industry takes the workman as it finds him* and *ANY* 'lighting up' is FULLY compensable and subject to employer-public-paid-for medical treatment to cure and relieve of the effects of industrial injury so as to put the worker back to work as a useful member of our economy instead of becoming a leech on our Great or Creative Society so as to intensify poverty instead of relieving it.

But the days of Chief Justice Waste, Arthur Pillsbury (who, as Governor Hiram Johnson's first industrial accident commission head, invented this magic formula that has brought the happiness our Federal Constitution permits the pursuit of and our California Constitution decrees the "obtaining" of, to millions of California families in the last 33 years) and Tanenbaum are over, if this insane decision, which couldn't be worse if made by Satan himself as the new ruler of the universe, is allowed to stand. It challenges credulity and does violence to reason. It makes 15,000,000 people ruled by fanaticism (dictionary definition "possessed by a deity or other supernatural agent," as here, where *"omnipotence"* or *"esoteri-*

cism" admittedly was the *"SOLE"* basis of the "decision," the partisan, fee-hungry doctor to the extent of deliberate perjury and fraud, as decision-writer for the administrative agency, calling it the former and the "amening" referee the latter). It makes them ruled by occultism, by surmise, by supposition, by premise, by hypothesis, by conjecture, by imagination, by fancy, by speculation, by esotericism, by omnipotence, by just plain unadulterated guesswork or witchcraft, none of which is, or should be, legal evidence in any court in the land much less its highest court, or even the State's highest courts, which are bound by the same rules of "substantial" and "due process" evidence as is our nation's highest, none of which is in accord with "due process of law" and all of which, including the doctor's self-proclaimed "omnipotent" guess in this case, blessed by the referee and respondent board as "esoteric" enough to be the *"sole"* basis of their approval of it as the decision of an administrative-judicial body charged with the sacred constitutional duty of guardianship over those very 15,000,000 wards, should be thrown into the ash-cans of society as their defilers, not elevated to a high perch in place of Mr. Chief Justice Waste's doctrine of human dignity that makes a man, or woman, or child, a *"person"* entitled to constitutional protection against such farcical, but tragic to 15,000,000 people, evidence such as that before the Court in this case brought on their behalf by their free but dedicated Ombudsman.

How deep that dedication is in this particular field (which is only one of a dozen important fields in which

he has operated in his 58 years of day and night service to the cause of government "of, by and for the people") must here be outlined so that this High Court may gauge its intensity and evaluate its soundness in the field of governmental inventions that make democracy work "PROPERLY," which gave him the press title over forty years ago of the "EDISON OF GOVERNMENT" in the days when he worshipped at the feet of such great humanitarians as Dr. David Starr Jordan of Stanford, which gave him his Juris Doctor degree in 1918, Hiram Johnson, the "FATHER OF WORKMEN'S COMPENSATION IN CALIFORNIA," whom he introduced in his initial appearance to a student rally at the San Jose High School as a candidate for Governor in 1910 and whose sponsoring letter is on file with the Clerk of this Court to enable him to gain admittance to its august chambers three decades ago in 1938, and Commissioner Pillsbury, whose invention of that era of "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM," he recognized as the greatest invention of the century in the field of good government, sound government, scientific government, economical government, government with a heart, but which invention has now been buried deep in the cesspools of poverty in California so as to add millions of people on our relief rolls in the days to come unless this High Court comes to the rescue of California by a poverty-preventing decision in this group test case governing the rights of most of California's teeming millions tottering on the brink and already shoved over the

precipice by her two highest courts in their decree of abolishment of this doctrine that has governed California for 33 years, inherent in their decision in this case, which definitely "dumped" the life-saving and grief preventing rule in question, fully briefed and asserted from beginning to end of the proceding, and brought us back to the chaos at the bottom of the cliff, so as to make this case not only a landmark one, but a real cliff-hanger, since only this High Court can reach down and grab this 33-year-old brain child of the "GREAT IMPLEMENTOR OF WORKMEN'S COMPENSATION"—Arthur Pillsbury—and pull it back to the safety of the solid rock of judicial decision on which our learned Chief Justice of that day and his six colleagues placed it.

Your Ombudsman is deeply concerned that this is the case, since once this High Court has spoken adversely, the harm can only be undone by another test case of similar hue but of less potency that it will take another thirty-three to a thousand years to find, since there will never be another case in which the decision-maker in the white robe conceded that he is governed in his admitted "GUESS" as to non-compensability by sheer "OMNIPOTENCE", exposed as a fraud by x-ray evidence that revealed the human skeleton under that robe, and the bowing referee and amening board members who adopted it as their own decision state in black and white, for all to read, that it was based *"SOLELY"* on sheer "esotericism". A more PERFECT case of "no substantial evidence", "failure of due process" and "failure of equal pro-

tection" could therefore not be found even in a thousand years, and California's teeming millions defrauded of their constitutional, statutory and court-approved rights will be dead by then, and the government's relief rolls will be bankrupted, with no money to feed the new generations that will have a difficult time to even exist when forced to pay for FULL eats, housing and medical attention out of their pockets or the taxpayers' when their employers and the general public they charge the premium bill to have already paid for the industrial disability on an *insurance* basis, so as to, in reality, *do away with the insurance basis for workmen's compensation,* which is like saying that a worker should expect the taxpayers to provide him a new home when the one he has paid insurance on for 57 years burns down because the fine print in the insurance contract says that the policy becomes invalid if termites had eaten into the house walls or rafters to the extent that it was ready to collapse at the very moment of the fire, so that it is hard to judge which came first the chicken or the egg, necessitating experts to determine the issue by guesswork so as to forfeit 100% of the insurance money if the expert called in says that the house would have collapsed at the very instant of the fire although the family using it as a comfortable and liveable home didn't even know that there were any termites in it, which is the EXACT ANALOGY to the instant case, since the breadwinner didn't even know there was anything wrong with his toe or foot up to the moment of the industrial trauma and yet lost 100% of his

compensation and 100% of his medical treatment because of the fake-God's guess that the race was a draw, that industrial trauma and culmination of 13 years of quiescence coincided.

Lest the justices of this High Court will say as they read this: "Oh, that guy is off his rocker and is exaggerating the situation all out of proportion, that a thing as serious as that couldn't possibly have occurred in progressive California, let me get more specific in my argument and analogy to the fire in the home with termites in its rafters, which our two highest courts have definitely ruled, since the issue was raised herein, and history has so chronicled their ruling in the official report of it, that the pro-rating rule is to govern in the future as to temporary disability, including medical attention and if the deciding judge in white robes rules that the termites won out 100%, so be it, the learned men in black robes cannot change things and can only say "'AMEN" or "WRIT DENIED".

The issue was more finely drawn in a recent California case (*Granado v. Workmen's Compensation Appeals Board,* 258 A.C.A. 131-132, 1/22/68, 1st Appellate Civil No. 24,644, Supreme Court No. S.F. 22,599) in which the Board went completely overboard and abolished, explicitly and specifically, the black-robe Waste-Pillsbury Tanenbaum doctrine, based on all "lighting up" being fully compensable, and substituted the white-robed doctrine that hereafter in California *ALL* temporary disabilities are to be prorated, so as to give Granado but half his compensa-

tion, and medical attention for half his disabled body (which half, the top, bottom or split down the middle half, it didn't say), because the insurance carrier's man in white robe "guessed" at this proportion as due to the previous condition in this "lighting up" case, so as to cut him down from $70.00 per week to $35.00, with State Aid to Needy Disabled, State Aid to Needy Children, and general relief, both in groceries and medical attention, picking up the tab for most of the balance and the man slaving for the next 5 or 10 years to pay any remaining medical bills or back wages needed for his family, so as to keep him in poverty the rest of his life because he had termites in his body he didn't know about, which lays the whole field of "HIDDEN INJURIES" open to decision by the doctor for the carrier, who on viewing the x-rays of the industrially disabled back in a typical case of the future, and present in California, since it is now the governing rule, rubs his hands in glee and says: "Oh, good, he has a little arthritis in his spine which he denies ever bothered him, no more than any man of his age, it is true, but since the x-ray revealed it, I estimate that 50% of his current temporary disability is due to the pre-existing arthritic condition. My carrier will appreciate such a wind-fall guess on my part and will reward me with $100.00 for my report to this effect, plus a $1,000.00 fee for a laminectomy or disc operation or $2,000.00 for a fusion operation if the man needs one. That will buy me a new Cadillac when I trade my last year's model in. The new business I get from the carriers when

they learn of my 50% guesses will get me a new yacht next summer".

The State Appellate Court, believe it or not, approved this abdication of the black robes of Chief Justice Waste to the white robes of the money-greedy "guessers for gain", on the theory that the Chief Justice and his colleagues and every single Justice on all our higher courts for three decades were wrong in construing "disability" subject to pro-rating as meaning "permanent" disability only and that if the Board decided to abandon its function as triers of the facts to the pro-rating guesses of the men in white robes, the men in black robes were too powerless to interfere.

At this, our venerable Supreme Court granted a hearing in that case, which is coming up in September. But it painted itself into a corner in denying a hearing on our *companion case* on the same issue, with but one difference, the deprivation of 100% of the man's compensation and medical attention instead of 50%, for if the Supreme Court of the United States now affirms the decision made in our case the ruling will be chronicled by the official reporter of California Compensation Cases as the established policy of the nation in these "hidden injury" cases, no matter what the State court rules, so as to necessitate another appeal to the nation's highest court to undo the harm done and change the Federal rule. We sincerely trust that this will not become necessary and that both the Supreme Court of our State in the *Granado* case and the Supreme Court of our Nation in this *Moreali* case will speak out concurrently, *as of one voice,*

against the attempted emasculation of the Workmen's Compensation Law of the nation's most populous State, whose teeming millions, if thrown suddenly onto the poverty rolls of the nation would cause a depression of major magnitude, in addition to setting the cause of good government back half a century.

The cause of good government is the primary concern of your (the Supreme Court's) *de facto* Ombudsman in these matters of government, at all levels, to which he has devoted his entire life. Only if we have good government can we have a happy people, and as "Lincoln Aides", "Candle Lighters" (from Father Keller's "It is better to Light one Candle than to Curse the Darkness"), "Torch Bearers", and "Champions of Justice and Scientific and Economical Government with a Heart", it is our "labor of love" duty to see that they are happy, just as it is the compensated duty of the addressees of this appeal to see that those million affected are allowed to "pursue happiness" under "due process" and "equal protection" rules, so that they may *ALL* share in "AMERICA'S DREAM", in the "WORLD'S DREAM," of all men at peace with themselves and with their neighbors, in heart color unity, be their skins black, white, yellow or red.

Your Lincoln Aide Ombudsman began this service to his State and Nation in this very field of workmen's compensation, which explains why it is so close to his heart.

When as a lad of 17, a Junior in high school, he heard from the lips of the man who fathered the sys-

tem in California those words upon which the entire system is based of "HUMAN RIGHTS ABOVE PROPERTY RIGHTS," "HUMANITY OVER DOLLARS AND CENTS", and "workmen's compensation" as the first big task to implement these immortal words, he was at the City Library that very night digging into the magazines for articles on Wisconsin's system to contribute research and debating skill to the great task of obtaining such a system for California. We "Bull Moose" Progressives of that era secured the passage of the first Constitutional Amendment the very next year (1911) and revised and improved it in 1918.

That year your Ombudsman doffed his Juris Doctor cap for a state official hat, which he wore for two decades as Chief Attorney and Chief Deputy for the State Labor Commissioner under 5 Governors, 6 Labor Commissioners and 3 Directors of the State Department of Industrial Relations. This was in the days when the A.F. of L. had no legal department and before the C.I.O. was born and it fell to your Ombudsman to carry on the battle to improve our labor laws all alone, to the extent of over 200 measures enacted at nine sessions of the Legislature, all without a single vote against them, and the commendation of Clyde Seavy, Chairman of the State Railroad Commission and later of the Federal Power Commission, to Hiram Johnson in 1938 as the man who "had done more than any Governor since your time to amend, keep alive and make truly effective the great humanitarian reforms for the protection of those who toil in

California you got through in those days of early struggle to implement them, and give them the 'postal card' justice we Progressives of the 'Bull Moose' days envisaged for those who toil and their dependents."

Fifty-eight years later this same Ombudsman spent four nights at the County Law Library till 3:00 A.M. (by special permission of the Law Librarian because of the importance of the task to 15,000,000 people) to research both the State and Federal fields of law for a foundation for an appeal to the nation's highest court to save this same treasured law from utter destruction at the hands of the "guessers in white robes" that have California's teeming millions on the rocks of despair. This Petition is the result. May his labors bear fruit, not be "love's labor lost".

They bore fruit on another case in this High Court 9 years ago (*Mannina v. I.A.C.*, supra), but in an unexpected manner. His petition was denied because an adequate foundation for Federal intervention had not been laid, but he filed a Petition to Reopen (here his 5-year period has expired and a "Writ denied" will sound the death knell of the hopes of millions), and at the hearing on same forced Dr. O. W. Jones, Jr., of San Francisco, leading neurological expert for the carriers in Northern California for over a quarter of a century, to admit, when placed under oath, that his lead guess of three that Charlie Mannina's severe headaches were "slight" was merely a *"GUESS"*, since he had no apparatus to measure pain and/or disability and no occult power not possessed by any other mortal to discern or evaluate same, adding later, in

a gracious gesture to your Ombudsman who had pursued the matter so relentlessly over the years: "My opinion, or rather my 'guess', as Mr. Johnson expresses it, is . . .". This brought the increase in the award prayed for in vain in our Petition for Writ of Certiorari to this High Court, a self-procured operation that cured the pain and disability completely and put the man back to work for four long months with no pain whatsoever, after which osteomyelitis unfortunately set in, necessitating further operations that left him a hopeless cripple with the highest award of $90,000.00 in any workmen's compensation case in history, but with Ombudsman loving struggles of 5 years, but for which he and his family would have become taxpayer burdens, as will millions of California families unless the Writ herein prayed for on their behalf by your Ombudsmanic Champion of Justice is granted.

In the *Maude E. Collins v. Workmen's Compensation Appeals Board, et al.,* case, W.C.A.B. No. 65, S.J. 15080, Appellate Court No. 23826, First District (hearing denied by Supreme Court) your Ombudsman forced Dr. Porter Forcade of San Francisco, the main orthopedic expert for the carriers in Northern California for the same quarter century period, to the same admission, when placed under oath, that he was merely "GUESSING" in his opinions as to pain and/or disability in these "HIDDEN INJURY" cases, he too adding later in his testimony the same words Dr. Jones used of "My opinion, or rather my guess, as Mr. Johnson expresses it, is . . .", proving

conclusively from the lips of the main experts in both fields that the two words are synonymous when applied to injuries these human beings in white robes have no more power to guess at accurately than the rest of us mortals that are entitled to wear black robes. Dr. Joseph J. Fitzsimmons of San Jose, the carriers' main local expert in the orthopedic field, qualified his answer to the Ombudsmanic question in that same Ombudsmanic Maude Collins case, when placed under oath, with "Yes, but it is an educated guess. . . . True, it is a guess, however", which is the same answer finally wrung from the offending doctor in the instant case, Dr. J. B. Josephson, the dean of orthopedic experts for the carriers in San Jose, after four hours of cross-examination.

In the same *Maude Collins* case that he admitted, when placed under oath, that his "opinions" in these hidden injury cases were mere "GUESSES", so as to conform to the New Century Dictionary of 1933, page 693, definition of the simple good old Abraham Lincoln term of *"guess" (" to form an opinion at random or from evidence admittedly UNCERTAIN"*, and giving on page 784 as a synonym of *"hypothesis"*, "a supposition; an assumption; often, a mere assumption or GUESS"), Dr. Porter Forcade, brought down to San Jose from San Francisco, at an expense to the carrier of some $200.00 or $300.00, to testify as to the degree of disability as caused by *"MINIMAL"* arthritis for a lady of her age, stated "In my opinion it was 80% to 90%", which opinion (guess) from this "BIG GUN" in the industry set the pattern for the lesser

lights who will, in the future, if *Moreali* and/or *Granado* remain the law, by approval from *either* the Supreme Court of our State or of our Nation, ordinarily cut their estimates of the effect of pre-existing arthritis, in temporary disability cases, down to 50% to 60%, since they don't have the colossal nerve of the veteran (and dean of them all) self-admitted "GUESSER FOR HIRE", although they will fear, if they don't make their guesses high enough under this new *sliding scale* of family living money determined by the men in white robes as worshippers of the dollar, rather than by our legislators as servants of the people, that high guessers like the pace-setter aforementioned will take all the business of the carriers away from them and they will have to close their elaborate offices, as one sincere doctor who wouldn't "guess" to suit the carriers did some years ago and the whole industry was held in line for fear of a like fate.

The referees, compromisingly, as a sop to the injured worker and his needy family, will ordinarily scale the estimates of the three high-priced experts (in the *Collins* case they had six) the carriers will ring in on California's laboring population to deprive them of their just and constitutional rights under this new "ETHEREAL GUESSING RULE" as a substitute for the solid Rock of Gibraltar Waste-Pillsbury Tanenbaum "NO PRORATING" rule, and will average it out, as in *Granado,* at 50%, so as to give the industrially injured worker, and his family, $35.00 per week to live on, instead of the $70.00 per week the

Legislature had guaranteed him, to save his loved ones from starvation, in the pre-Moreali and pre-Granado days of justice before pseudo-gods in white robes, as the sacred remedial system's new decision-writers, salted it with "esotericism", "omnipotence", occultism, fool's gold, and just plain witchcraft based on guesses.

To show how this new California system of revelation from on high, by spooks in white robes, as recruiting agents for poverty, will work in actual practice and bring California's teeming millions of hungry mouths to the public troughs of despair, let me take down my hair and brief, as their Ombudsman, our High Court Justices (with two of whose Chief Justices—the late Fred Vinson and retired Earl Warren —I have dined and who called me by my first name, and know are human beings with a compassion for the "EQUAL JUSTICE UNDER LAW" the label on their workshop proclaims to the world), and the rest of the human beings receiving copies of this PETITION (which is going out to 130 of our concerned public officials in California, from the Governor, Speaker, Justices of our Supreme Court, Presiding Justices of our Appellate Court on down to the Board members, Referees at San Jose and concerned attorneys, with type retained for a possible re-run for thousands of law students throughout the nation as an Ombudsmanic text book on good government (Abraham Lincoln "of, by and for the people" government, bolstered up with "Edison of Government" inventions or improvements to perfect its operation and keep it scientific, economical and humane) by lifting the cur-

tain to show the back-stage operation of our government at the enforcement level, in which I have had a half century of Ombudsmanic experience, both public and private, pin-pointing the discussion on the typical situation which arose in the *Charles Mannina* case (supra) of the "THREE GUESSING DOCTORS" I tossed into the lap of this High Court 9 years ago as America's *de facto* Ombudsman.

First of all, when I tackled that case, I made a trip to San Francisco to seek advice from the main legal expert in the field at that time, the late and highly respected Clarence Todd, whose strong voice had rung out on behalf of organized labor for two decades in the State's courts, from the lowest hearing room to the august chambers of our highest court. Asked what he would do to counteract the three carrier-doctor "guesses" that the man's headaches were "slight", he gave the answer I had learned to expect from those of the 30,000 attorneys in California who specialize in workmen's compensation, many of them trained in my office, of: "I'd get six experts to testify that his headaches are severe".

On my way home I made the decision to ignore this advice (which corresponds to the practice of most of the workmen's compensation attorneys in the field), totally and completely, the rationale of my decision, which became a high point in my life of 58 years of Ombudsmanic service in this field, being expressed in the words "Surrender to *guesswork* justice—*NEVER*. *Exact* justice, EQUAL justice, *REAL* justice must prevail. Right makes might, and I'll go to the Supreme

Court of our Nation before I'll accept the *imitation* kind." This I did, in that very case. I am here for the second time, on the very same issue—this time fortified by a proper foundation of PROVED violation of constitutional rights, out of the mouths of the violators themselves, and PROVED *"guesses"* as synonymous with "opinions" in these truly hidden injury cases, out of the mouths of the very top experts in both the neurological and orthopedic fields I was considered a "nut" in and threatened three times in the last quarter century for contempt and/or contumacious conduct in by referees for saying what I have now, at long last, definitely PROVED, namely, "that these men in white robes are just guessing as to pain and/or disability they cannot see and have no *earthly* way of gauging, and *that they know it"*, both factors proved by the power of an oath, on four separate occasions, and the sworn testimony of the very top man in the neurological field in Northern California and the three very top men in the orthopedic field.

I refused in the *Mannina* case to hire a single expert and yet won the highest award in the history of the California Workmen's Compensation Law in it, by forcing the chief of the three "guessers for hire" to admit under oath that he was merely "guessing" and had no more expert knowledge on the degree of pain and/or disability in these true hidden injury cases than the man on the street, since God had concealed this knowledge from him too as a man with feet of clay.

In my earliest case on the subject, *City and County of San Francisco v. Margaret Cecelia Pollard,* I.A.C. No. 87,916, which arose on April 19, 1944, three months after I returned from seven years of service to 150 Congressmen (75 Democrats and 75 Republicans) as their uncompensated Ombudsman at Washington in helping to remedy the two main defects in the Social Security Act of 1936, namely coverage for half our people only, those on payrolls, and no coverage in the way of compensation and medical care for those totally disabled before they reached the retirement age, and opened my private law office in my home town of San Jose and became for 10 years the retained attorney in workmen's compensation matters for each of the 108 unions in the Building Trades Council and Central Labor Council in Santa Clara County, I had *sixteen* of the top experts in all fields, including the very same guessing Dr. O. W. Jones, Jr., referred to above, opposing me, plus a negative myelogram and *sixteen* expert "GUESSES" that this was the "worst case of hysteria ever called to the attention of the Commission", with only Dr. Elwood Olson of San Francisco and a continually collapsing left leg on my side, but won a $9,300.00 award for her and a self-procured operation that removed two large ruptured discs from her back and put her back to work as a registered nurse inside of two months, after two years of disability because 16 guessing doctors guessed that "it was all in her head".

My second Ombudsmanic test case in my quarter century battle against occultic determination of the

rights of those injured while toiling, and their dependents, came in the Appellate Court case of *Evans v. Industrial Accident Commission,* 71 C.A. 2d 244, 249 (1945), which gave the Commission (now Board) the right, for the first time, and made it mandatory on it, to overrule the referee if he went entirely on the doctor's guesses (based on falsified factual data, there as here) and ignored the facts.

My second Ombudsmanic test case in the courts, *Cadotte v. I.A.C.,* 86 C.A. 2d 754 (1948), established the judicial rule for California that in this hidden injury field the FACTS speak *LOUDER* than the GUESSES of experts and if the Commission (now Board) ignored them and decided the case on the basis of the medical guesses "SOLELY", it "would be acting *"IMPROPERLY",* which *"improper"* conduct is now before the highest court in the land for adjudication, since the ADMITTED fact is that it acted, in the instant case, "SOLELY" on this "ESOTERIC" or "OMNIPOTENT" evidence, to the total exclusion of the facts and the report of the attending physician, Dr. A. V. Giampaoli, which was as follows:

> "It was certainly obvious that this man had a bunion or more technically hallux valgus of the left foot. I am positive that it is strictly developmental in nature. However, I have been seeing Mr. Moreali for five and one-half years at relatively frequent intervals and I do not recall that he has ever complained of any discomfort of his left foot. After having bumped the foot he had, and I quote from Dr. Josephson's report, 'Immediate swelling and a great deal of pain. There

> seemed to be an increase of fluid within the joint.' It is obvious from the history alone that the injury aggravated his pre-existing defect and therefore it is hard for me to see how this injury can be anything other than industrial."

This medical evidence of a "down-to-earth" attending physician was not "ESOTERIC" enough or "omnipotent" enough for the Referee, or the Board, so they threw it in the waste-basket and thumbed their noses at Chief Justice Waste and his unanimous court in the *Tanenbaum* case (supra) with the only sane and feasible "lighting up" or "aggravation" rule this mere attending physician tried to restate so brilliantly in his non-legal language, and deliberately defied the three Appellate Court judges (one now on the Supreme Court) who had *pre-judged* their conduct in this regard in going on the *"esoteric", "omnipotent"* or guesswork evidence "SOLELY", as *"IMPROPER".*

In such manner has both this "lighting up" rule, adhered to and respected as the very corner-stone of California Workmen's Compensation justice by *every* higher court justice for 33 years, and the *Cadotte* rule, referred to and adopted by our two higher courts so many times in the last two decades since it was established as to give it landmark decision status, gone down the drain in California, to the utter chaos of government budgets geared to the sound *insurance* system inherent in California's basic act for the protection of those who labor but have now been crucified on a cross of gold, which casts its shadow on all the

human misery relief institutions in the State, which must now pick up the tab for the malfunctioning of the workmen's compensation insurance system, into which the the monkey-wrench of "no insurance coverage" has now been thrown by our State Supreme Court's approval of this wreckage of the noble institution we Ombudsmen reformers who have nursed the system from infancy and have lived to see it destroyed in favor of nineteenth century *full* feeding of families on public relief rolls, against which no insurance can be carried, and on which the 20,000,000 taxpayers of the State (even the savings of children are dug into for taxes) must pay the bill on the basis of the "UN-INSURED" verdict in all cases akin to that before us.

Such, in brief, is America's Ombudsman's personally written "toiling upward in the night" history of the Workmen's Compensation Law in California, from its cradle to its grave as far as concerns ninety-nine per cent of the people—those who receive "HIDDEN INJURIES"—who were its intended beneficiaries by those of us who authored it and nursed it to full fruition, only to live to see its main branch felled by the headhunter's axe.

There is life in the limb, however, and as I read in the paper about the little girl who had her right hand successfully sewed back on and "watch the things I gave my life to broken", I, with Rudyard Kipling, "stoop and build them up with worn-out tools", tools used in the legislative chambers for thirteen sessions in the last half century and in the courts of the land, including its highest, for the last quarter century.

This branch of the tree of government, although its main humanitarian one, along with the Social Security Act nurtured by seven years of tender, sacrificing care during its infancy, as outlined above, and for two and a half decades in the field, trimming its branches in the courts and administrative chambers to make it work "properly", scientifically, economically and humanely, is not the only branch to have received Ombudsmanic attention during the last 58 years since the march of government science and her handmaidens —human compassion and taxpayer relief—in a young lad's mind began.

His first act of legislative concern was to father the California Small Claims Court Act in 1921, born from a common postal card received from a constituent by Assemblyman Albert Rosenshine of San Francisco, which read "I object to paying $10.00 to an attorney to collect a small claim of $25.00. Can you help me?" At that instant was the act bearing the words of the card in its title born, with a $50.00 limit approved by every member of the Judiciary Committees of both Assembly and Senate at the young Ombudsman's just-out-of-college solicitation, to be raised to $100.00, $150.00, $200.00 and then $300.00 at the last session and $500.00 at its next (as the amount volunteered as proper by 50 attorneys interviewed at random in your Ombudsman's home county) and then exported to the entire nation so that the remaining 180,000,000 people too may enjoy its benefits as a product of the "increased devotion to the great unfinished task remaining before us" in making "of, by and for" democracy work properly.

The second act of the young Juris Doctor who has made it his lifetime job to doctor up the weaknesses and ills of government, conceived in 1927 in his Edisonic mind in things governmental, needed the cooperation of another young Juris Doctor from a rival institution whose name is Earl Warren—then a young Deputy District Attorney from Alameda County handling legislative matters at Sacramento for the Peace Officers and District Attorneys and who will go down in history as America's Greatest Chief Justice of her Supreme Court. A simply inquiry to him by the Ombudsmanic inventor of "Why can't we have one crime of theft, Earl, instead of the three screw-ball crimes of the days of Blackstone depending on when the intent to steal took place?", brought the instantaneous response from the only possessor of a real Earl Warren mind in America of "You've got a million dollar idea there, Arthur, and if it spreads to other States, you've got a billion dollar brain child." My inquiry as to why he said that produced this illuminating response: "Right now in Oakland we have three cases on trial trying to determine which came first the chicken or the egg—when did the intent to steal take place—one on trial for the third time after trips to the Appellate Court and Supreme Court. You have to try your fraud on workers case at San Francisco again and waste another expensive week of the court's time. This can all be avoided if the time element becomes immaterial. You have saved a million dollars a year to the people of California by this bril-

liant idea, to say nothing of unclogging court calendars, both civil and criminal, that will follow in the wake of its adoption."

This was 41 years ago and the $41,000,000 saved the taxpayers of California by this governmental invention is but a drop in the bucket to what will be saved her taxpayers in the limitless future and the courtrooms opened for the "day in court" by the people waiting years for it and the "billions" that can be saved, according to the now retired Chief Justice, if the idea spreads to other States, which it has not, except for New York and Florida, so far as I can learn from letters to their Governors and Attorneys General, so that the people of 47 States of our Union are still living in the darkness of the common law days and wasting "billions" that could be used for the relief of the poor if there is anything to Benjamin Franklin's theory that "A penny saved is a penny earned" or "An ounce of prevention is worth a pound of cure".

To the end of saving this "billion dollars" as the contribution of the Lincoln Aide Ombudsmen to the War on Poverty and to the end of unclogging our court calendars all over the nation and bringing the "administration of justice in America into the Twentieth Century" as the man with the Earl Warren mind expresses it in his talks to the law schools, we are taking him at his word and, now that he has retired from public life after a two and a half score years and one of service in it, we are inviting him to head

our non-profit, non-partisan, non-sectarian Lincoln Aide Movement for better government, in which he has served in every branch, executive, legislative and judicial, by becoming President of the OMBUDSMAN UNIVERSITY OF THE WORLD, organized four years ago to implement it, as the only "training school in government", such as has been advocated as needed by Eleanor Roosevelt, Harry Truman, Adlai Stevenson, Dwight Eisenhower and Earl Warren, that exists in America, and to chair the mass meeting at the Civic Auditorium in San Jose that is to mark the opening, as the New Year dawns on January 2nd, of the greatest campaign or crusade ever undertaken in America to enlist the aid of the young people of the nation and all others who want to show "increased devotion to the great unfinished task remaining before us" of making democracy work *PROPERLY*, so that government "of, by and for the people shall not perish from the earth."

With the growing move to reduce the voting age to eighteen there must be some sort of an institution to fill the void or vacuum that will arise of lack of training or learning in things governmental, so that it may be that Victor Hugo will yet be proved right as to the efficacy of an idea whose "time has come", so as to fully vindicate America's "EDISON OF GOVERNMENT" for inventing, four years ago, on July 4, 1964, the "OMBUDSMAN UNIVERSITY OF THE WORLD" as the vehicle to spread, via air and sound wave, printed page and air-lifted personal ap-

pearance, such knowledge to the youth of America and others with ideas youthful enough to accept the Johnson to Warren—inventor to implementor—"INSTANT ADOPTION" method of legislation utilized in the immediate enactment (within 30 days) of California's "UNIFIED THEFT LAW" (banning common law darkness), as against the "THIRTY YEAR PLAN" of professorial talk in vogue today.

That Earl Warren "INSTANT ADOPTION" method of implementing century-needed reforms (as in the simplified THEFT field) may yet be utilized to remedy the age-old bail evil by your Edison of Government's simple invention of paying the 10% to the county instead of to the bail bond broker, so as to become a prepaid fine if guilt is established or return to the party if found innocent. This simple remedy for the bail ills of the nation that jail 100,000 Americans *PER DAY* (an average of 33 in each of the nation's 3072 counties) while their innocence is being proved, could be adopted overnight if our venerable retired Chief Justice, whose interest in bail reform dates back to his prosecuting days of half century ago, will but accept our plea that he head our movement, initiated 31 years ago by 150 dedicated nonpartisan Congressmen, to implement the "promote the general welfare" clause of the Constitution by remedial legislation based on science, economy, and humaneness, by becoming President of the GENERAL WELFARE FEDERATION OF AMERICA, INC., which office is hereby tendered him by your Ombuds-

man, who has been seeking such an honored head for it for three decades. If he also accepts the tendered office of President of the OMBUDSMAN UNIVERSITY OF THE WORLD, as your Ombudsman's greatest invention in the field of government, where he has been known by the press for over four decades as "GOVERNMENT'S EFFICIENCY AND HEART EXPERT", that institution, the birth of which has not yet been announced by the press because considered too illusionary to be real, will soon become the greatest institution for the training of youth in things governmental that this world has ever seen, and Earl Warren will, in retirement, continue to serve his nation in the unbridled field of humanitarian service in the same efficient manner as he did for half a century in the harness of government. Let us pray that his age, which is only two years greater than your Ombudsman's, will not bar him from this great additional service to mankind urged upon all of us by the immortal Lincoln.

The contribution of the Justices of the Supreme Court of our Nation to this great unfinished task of making mankind kind can be to see to it that the most basic act for the protection of the teeming millions who toil in California, and their dependents, does not die from the near fatal blow that has been dealt it and that it will be revived to live another year, another century, another eon, or until the fifth of Never, to protect those men, and women, and children, with more than an empty slogan of "EQUAL JUSTICE

UNDER LAW", so that the landmark decision we expect from this revered High Court will live forever in the hearts of men everywhere.

Respectfully submitted,

ARTHUR L. JOHNSON,

Attorney for Petitioner, and, as amicus curiae, America's Unofficial and Uncompensated Ombudsman, Lincoln's Chief Aide, Candle Lighter, Torch Bearer and Champion of Justice and Scientific and Economical Government With a Heart, and in these capacities, representing the 7,000,000 California workmen employed in industry, and their 8,000,000 dependents, who are sorely aggrieved and damaged, as the largest group in the State of California, by the decision herein complained of.

(Exhibits Follow)

Exhibit A



Exhibit B

Thomas N. Foster, M.D.
William H. Graham, M.D.
N. K. Darling, M.D.
D. Brendan O'Donnell, M.D.

Radiologists
Physicians and Surgeons Building
630 East Santa Clara Street
San Jose 12, California

March 9, 1964

TO: A. V. Giampaoli, M. D.

RE: *Mr. Joseph I. MOREALI. Comparison Report.*

Comparison of your examination of the left foot of Mr. Joe Moreali dated 5/11/59 with our examination at O'Connor Hospital dated 6/30/62 reveals similar angular relationships in the two examinations. In each instance the proximal phalanx of the first toe is angulated approximately 30 degrees laterally in relation to the shaft of the first metatarsal, and the shaft of the distal phalanx is angulated laterally approximately 17 degrees in relation to the proximal phalanx.

In each examination the first metatarsal head is separated from the second metatarsal head by a distance of approximately 1.0 cm.

Very minor variations in these measurements exist between the two examinations, not beyond the range of which might occur during positioning.

Thomas N. Foster, M.D.

SUPREME COURT, U.S.
AUG 3 1966
JOHN F. DAVIS, CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI, *Petitioner,*

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND, *Respondents.*

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EVERETT A. CORTEN,
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San Francisco, California 94102,
Attorney for Respondent Workmen's Compensation Appeals Board of the State of California.

SELMA MIKELS,
Of Counsel.

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Workmen's Compensation Appeals Board of the State of California (formerly Industrial Accident Commission), respectfully submits its brief in opposition to the petition for a writ of certiorari filed by petitioner Joseph I. Moreali.

OPINIONS BELOW

On December 5, 1967, respondent Appeals Board issued its Order Denying Reconsideration (petition, pp. 13-15) of its referee's Supplemental Findings and Orders dated October 16, 1967 (petition pp. 15-17) thereby affirming the determination that petitioner had not shown good cause to reopen the Board's 1963 decisions in the matter.

The 1963 Findings and Award (Exhibit I attached hereto) and the 1963 Opinion and Order Denying Reconsideration and the referee's Report and Recommendation on Petition for Reconsideration (Exhibit II attached hereto) had in effect determined that surgery to the congenital bunion on petitioner's left foot, any temporary disability beyond the 7-day waiting period and any further medical treatment was not due to petitioner's stubbing his toe at work on June 16, 1962 and had denied benefits therefor.

A petition for writ of review of these 1963 decisions was denied by the Court of Appeal, First Appellate District, State of California, without opinion, on September 6, 1963, and a petition for hearing in the Supreme Court of California was denied without opinion on October 1, 1963.

From the Board's 1967 decision petitioner filed a timely petition for writ of review in the Court of Appeal, First Appellate District, State of California, which was denied without opinion on April 10, 1968. Petitioner next filed a petition for hearing in the Supreme Court of the State of California, which was denied without opinion on May 9, 1968.

JURISDICTION

The jurisdiction of this Court is invoked under 28 *United States Code,* Section 1257(3).

Petitioner asserts that he "and 7,000,000 other California workers (and their 8,000,000 dependents) who may sustain *hidden* injuries" have been deprived of the equal protection of the law and the due process of law guaranteed them by the *United States Constitution,* Amendment XIV, Section 1, because the respondent Appeals Board reached its decision herein in reliance upon the opinion of an orthopedic surgeon and because the Board allegedly applied a different rule of law from that governing cases involving "their brothers in the same class or group who sustain injuries *visible* to the naked eye or x-ray film . . ." (petition, p. 20; emphasis added).

Respondent Board submits that the Court of Appeal and the Supreme Court of the State of California correctly applied controlling California statutes and case law which, in turn, are not in conflict with the Constitution, the laws of the United States or decisions of this Court. It is submitted that petitioner has not shown any federal question to exist and that the case does not, in fact, present any federal question. It is further submitted that the petition for writ of certiorari should be summarily denied under *United States Supreme Court Rule No. 23, subdivision 4,* because it fails to

> ". . . present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration. . . ."

THE QUESTIONS PRESENTED

1. Should the petition for writ of certiorari be denied under *United States Supreme Court Rule No. 23, subdivision 4?*

2. Did respondent Appeals Board, in refusing to reopen its 1963 decision in this matter, deny petitioner due process of law and equal protection of law as guaranteed him by the *United States Constitution,* Amendment XIV, Section 1?

STATUTES INVOLVED

California Labor Code provides, in pertinent part, as follows:

> *Section 4600.* "Medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, . . . which is reasonably required to cure or relieve *from the effects of the injury* shall be provided by the employer. In the case of his neglect or refusal seasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment. . . ." (Emphasis added.)
>
> *Section 4650.* "If an injury *causes temporary disability,* a disability payment shall be made for one week in advance as wages on the eighth day after the injured employee leaves work as a result of the injury; provided, that in case the injury causes disability of more than 49 days or necessitates hospitalization the disability payment shall be made from the first day the injured em-

ployee leaves work or is hospitalized as a result of the injury. . . ." (Emphasis added.)

Section 5803. "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any such order, decision, or award, *good cause appearing therefor.* . . ." (Emphasis added.)

Section 5804. "No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years . . . ."

STATEMENT OF THE EVIDENCE

The petition contains little in the way of a statement of the facts in this case and much that is not evidence. Moreover, the petition sets forth on page 18 under the heading "THE 'DECISION' ITSELF —SO FAR DEEMED SACROSANCT AS COMING FROM GOD HIMSELF" a jumble of out-of-context statements from Dr. J. B. Josephson, upon whose opinion the Board relied, juxtaposed in such a manner as to disparage the doctor's competence and candor.*

*As a matter of record the first, third and fourth paragraphs on page 18 are from reports and testimony given before the 1963 Board decision and therefore not, strictly speaking, part of the case before this Honorable Court today. The second paragraph is a statement made under oath on September 6, 1967, which was followed however by testimony of a completely different purport. The

Because of the scanty and jumbled statement of the facts in the case set forth in the petition and because of the almost scurrilous nature of the accusations made by petitioner against Dr. Josephson and respondent Board, it becomes incumbent upon the Board to set forth in intelligible fashion the essential facts for consideration by this Honorable Court.

The 1963 proceedings

Joseph I. Moreali was born December 1, 1923, with bilateral metatarsus adductus, a condition afflicting about 5% of the population, in which the large toe turns toward the center line of the body very much like the thumb on one's hand. As individuals with this condition grow and wear shoes, the forcing of the great toe into a position parallel with the other toes develops what is known as a hallux valgus, from which develops a bony exostosis, known to laymen as a bunion. On July 21, 1947, long before the inci-

---

complete colloquy between counsel for petitioner and Dr. Josephson was as follows:

"A. We have to call those educated guesses because it took me many years——

Q. You were guessing?

Mr. Supan: I object to the question. It has been asked and answered.

The Witness: It is not guessing.

Mr. Johnson: Q. You say it is an educated guess, but it is not a guess?

A. No, it is not a guess; it is an opinion.

Q. Is there any difference between a guess and an opinion?

A. There certainly is. One of them depends upon the law of chance, and the other depends upon a great process of reasoning.

Q. And assuming God features in you of omnipotence, you said you had to bring in the omnipotence?

Mr. Supan: I object. He is harassing the witness.

Referee: Sustained." (R.T., September 6, 1967, p. 50, lines 2-19.)

dent which gave rise to this case, Mr. Moreali sustained an industrial injury to his right foot which necessitated surgery on that foot. This surgery was performed by Dr. J. B. Josephson and Dr. Nels W. Ahnlund, one of his office associates, both of them orthopedic surgeons. At the same time the doctors repaired the bunion on Mr. Moreali's left foot.

On June 16, 1962 while employed as a butcher for Lowell Foods, Inc., Mr. Moreali stubbed and bruised his left foot. He was not disabled for longer than seven days immediately following this incident. However, due to pain, he consulted his family physician, Dr. Albert V. Giampaoli, who had x-rays taken on June 30, 1962 and who referred him again to Dr. Josephson. On July 31, 1962, Dr. Josephson operated on the left foot, having first advised Mr. Moreali that while he was recovering from the effects of the injury of June 16, 1962, the trouble that he was having and would continue to have with his left foot was a natural result of the congenital condition for which surgery had been previously performed. The surgery was therefore done on a non-industrial basis. Nevertheless, on September 11, 1962, Mr. Moreali filed an application for workmen's compensation benefits claiming reimbursement for this self-procured surgery and for temporary disability indemnity from and after July 22, 1962. After hearings in which Dr. Josephson's reports were presented and he testified at length, the referee issued Findings and Award on March 29, 1963, denying Mr. Moreali's claim on the ground that it arose out of the preexisting progres-

sive congenital condition which was neither accelerated, exacerbated nor "lighted up" by the industrial injury. A petition for writ of review was denied by the Court of Appeal of the State of California and a petition for hearing was denied by the Supreme Court of California.

The 1967 proceedings

On June 15, 1967, the last day before the Appeals Board's jurisdiction would expire, Mr. Moreali filed a petition to reopen the 1963 award. He gave, as the required "good cause" for reopening, the fact that in *September 1963* he had discovered new evidence consisting of 1959 x-rays of his left foot which, being identical with the June 30, 1962 x-rays, would show conclusively that there had been no progressive deterioration of the condition of his foot and would therefore refute totally Dr. Josephson's opinion on which the Board chiefly relied in its 1963 decision.

A hearing was held on September 6, 1967. The 1959 x-rays were offered into evidence along with a roentgenological reading to the effect that they showed a similar angular alignment between the toes to that shown by the 1962 x-rays. Dr. Josephson testified at length. Mr. Moreali urged, mainly through the assertions of his counsel during the cross-examination of Dr. Josephson, that the 1959 x-rays really showed that the preexisting congenital condition was nondisabling prior to being "lighted up" by the 1962 industrial injury. No expert medical evidence was of-

fered by Mr. Moreali to support this view. When questioned about the x-rays Dr. Josephson said that since they were "static" they did not show dynamic changes taking place in Mr. Moreali's foot, that is, the pulling of the big toe under the other toes which necessitated the surgery, all of which had been discussed with Mr. Moreali before the surgery was performed. Dr. Josephson also testified that the 1959 x-rays did not at all change his evaluation of his findings at surgery, which confirmed his previous diagnosis, that the condition for which surgery was being performed was the congenital one and had nothing whatsoever to do with the slight bruise which occurred on June 16, 1962. Dr. Josephson further testified that he was aware of the rule of law in California that an injury which "lights up" a quiescent preexisting condition is considered responsible for the "lighting up" but that at the time he saw Mr. Moreali, about a month after his 1962 injury, he was recovering from the effects of the injury and what required surgery was simply the original condition. He further stated that a series of operations are frequently required for this kind of a condition because one operation will not correct it completely.

At the 1967 hearing, as at the hearing in 1962, Mr. Moreali testified that he had had no difficulty whatsoever with his left foot from a few months after the 1949 surgery until the 1962 injury. However, as Dr. Josephson pointed out, this statement was refuted by the very 1959 x-rays on which the petitioner was relying to reopen his case. Mr. Moreali's testi-

mony was further refuted by hospital records which were introduced *on his behalf* containing a history given by him to a Dr. George Waters on November 14, 1963, in which after mentioning the 1949 surgery Dr. Waters remarked, "He [Moreali] had some persistent difficulty with the left great toe thereafter." (To this contradiction in petitioner's own evidence the petition before this Honorable Court makes no reference whatsoever.)

The referee found in his Supplemental Findings and Orders dated October 16, 1967, (petition, pp. 15-17) that good cause to reopen was not shown, and denied the petition. Mr. Moreali's petition for reconsideration was denied by the Appeals Board, which adopted and incorporated the reasons of the referee contained in his Report and Recommendation on Petition for Reconsideration (petition, pp. 13-15) namely:

> ". . . The so-called new evidence (4 years in applicant's possession before he filed his petition to reopen, incidentally,) was not sufficient to change either the doctor's opinion nor necessarily, the Referee's."

Petitioner's attempts to secure review of this decision by the highest courts of California were unavailing.

ARGUMENT AND AUTHORITIES

I

FOR FAILURE TO COMPLY WITH THE UNITED STATES SUPREME COURT RULES, THE PETITION SHOULD BE SUMMARILY DENIED.

Supreme Court Rule No. 23, subdivision 4 (28 U.S.C.A.) provides:

> "The failure of a petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

Not only are the facts not presented accurately or with clarity or brevity, but the facts at issue and the questions to be decided in the 1963 part of the case and the 1967 part of the case are so inextricably commingled in the petition that it is impossible to determine which facts relate to the earlier case not now before this Honorable Court and which facts relate to the case which is presently before it. Petitioner is apparently under the impression that on his petition to reopen he is entitled to retry all the issues which have long since become final and his confusion in this regard is reflected in his petition itself. The inaccuracies in the petition are best exemplified by the misrepresentation of Dr. Josephson's opinions footnoted supra at pages 5-6.

It is respectfully submitted that for failure to comply with the stated rule, the petition should be summarily denied.

II

RESPONDENT BOARD SUBMITS THAT THERE HAS BEEN NO VIOLATION OF THE CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW IN THIS CASE.

As shown by the statement of facts, petitioner was given numerous hearings and was permitted a full and complete opportunity to present his evidence. Both procedurally and substantively, petitioner was accorded due process of law.

Controlling California statutes and case law were applied to this case and are applied uniformly to all cases of injury—"hidden" or otherwise. Accordingly, petitioner was not deprived of equal protection of the law.

The finding of the Board that petitioner had not shown good cause to reopen the 1963 decision was made after due consideration of all the evidence and was based upon substantial and uncontradicted medical opinion concerning causation, not upon "guesses". Furthermore, the decision was based upon the important premise that petitioner had failed to introduce any evidence from which the Board would have been justified in reopening its old decision. Thus there would appear to be no federal question presented by this case.

Petitioner has, however, made sweeping accusations against the courts in California charging that the men "in black robes" have surrendered decision-making to the men "in white robes" (p. 25), the "partisan, fee-hungry doctor . . . of deliberate perjury

and fraud" (p. 27). Petitioner claims that the rule of *Tanenbaum v. Ind. Acc. Com.* (1935), 4 Cal. 2d 611, has been abrogated in this decision in a way which constitutes a deprivation of petitioner's constitutional rights. Petitioner also makes reference to certain decisions and cases in which his own counsel participated and claims that they support his position.

Because of the confusion created by the petitioner's presentation of the case your respondent Board feels the petition requires answering even though the issues involved are more strictly for consideration by the state courts than by this Honorable Court.

A. The Rule in Tanenbaum v. Ind. Acc. Com. Has Not Been Misapplied in This Case.

In the *Tanenbaum* case the Supreme Court of California approved apportionment of a woman employee's permanent disability to her shoulder between the industrial injury and the "normal progress of the preexisting arthritis" which, prior to her accident, had been dormant. The court affirmed the then Industrial Accident Commission's apportionment which, in turn, was based upon medical opinions adduced before it.

The rule, reiterated by the court in *Tanenbaum* that "the employer takes the employee subject to his condition when he enters the employment", was held not to militate against the apportionment made in the case. The court distinguished between injury which in a person of a stronger constitution would

cause no disability but which is nevertheless compensable and a disability which to the extent that it is due to the normal progress of a preexisting condition is not compensable. It will be noted that in *Tanenbaum,* as here, the applicant testified that prior to injury she was not disabled or troubled by arthritis and, as here, the injury was one which might be called a "hidden" one. Also, as here, the opinions of the doctors prevailed over the claim of the applicant herself that she had no preexisting condition to which her disability could be attributed. Both procedurally and substantively the decision of the California Supreme Court in *Tanenbaum v. Ind. Acc. Com.,* still the law in California, is very strong support for the Board's decision in this case. We are now, of course, referring to the Board's original, that is to say, the 1963 decision. The *Tanenbaum* case has no relationship at all to the decision arrived at by the court in 1967, the one which is really the subject matter of this proceeding.

B. Petitioner Has Not Shown "Good Cause" to Reopen Under Labor Code Sections 5803 and 5804.

The 1967 case arose out of the petition to reopen filed the day before the end of the Board's 5-year jurisdiction within which it has the right to alter or amend its decision, "good cause appearing therefor". Of these qualifying words the Supreme Court of California has had this to say:

> "It is self-evident, we think, that if the words, 'good cause appearing' are to have any place or purpose in said statutory provision, the power of

> the commission to change its former orders or awards may not be predicated upon a mere change of opinion by the commission as to the correctness of its original decision, but there must exist some good ground, not within the knowledge of the commission at the time of making the former award or orders, which renders said original award or orders inequitable. In the absence of any such circumstance justifying a reexamination of the controversy, the commission is powerless to act, and the former award or orders are final and invulnerable." *(Merritt-Chapman & Scott Corp. v. Ind. Acc. Com.* (1936), 6 Cal. 2d 314, 316-317.)

The Supreme Court in the *Merritt-Chapman* case went on to say that the power to reopen " 'invoked on the ground of newly discovered evidence, should be exercised with great caution and when fraud, inadvertence, mistake or excusable neglect are clearly shown. Otherwise the process of introducing evidence before the commission would be interminable and the commission might be held to abuse its discretion in the exercise of its power under section 20 (d) [predecessor to Labor Code Sections 5803 and 5804].' " (Ibid, p. 318.)

At the time of its 1963 decision in this case the Board had before it detailed medical history on the applicant including a report from the Dr. Giampaoli who ordered the controversial 1959 x-rays. Petitioner herein never attempted to show any reason why those 1959 x-rays were not discovered long before the time of filing the petition to reopen in 1967 and specifically why they were not filed along with the report from

Dr. Giampaoli in 1962. Even assuming that there was excusable neglect, mistake, or inadvertence in their not having been produced earlier, petitioner did not produce any medical opinion from which the Board would have been justified in concluding that the x-rays were of sufficient probative value that justice and equity required upsetting its previous decision holding that the 1962 surgery to the applicant's left foot was due to the progressive nature of his congenital condition and not to the already healing bruise to his toe incurred at work.

Dr. Josephson explained in great detail when on the stand in 1967 why the 1959 x-rays were not sufficient to change his original opinion that the surgery was not industrially related. The hospital records containing petitioner's interim history supported Dr. Josephson's opinion that the left foot was deteriorating prior to and irrespective of the 1962 injury.

Petitioner's 1967 "new evidence" was not only insufficient to constitute good cause for altering the Board's 1963 decision; its total effect was to substantiate the propriety and justice of that decision.

C. Where the Determination of Whether a Particular Disability or Medical Treatment Is Required Because of an Industrial or a Non-industrial Condition Involves a Medical Evaluation of Causation of the Condition, It Is Proper, Indeed It Is Necessary, That the Board Rely, in Making Its Decision, on Proper Medical Opinion.

The California courts have said:

> "'It is only when there is a direct causal connection between the exertion of the employment and the injury that an award of compensation

> can be made. *The substantial question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.* In the former case, no award can be made; in the latter, it ought to be made.'" *(Beveridge v. Ind. Acc. Com.* (1959), 175 Cal. App. 2d 592, 598; emphasis the Court's.)

The courts have also stated concerning the issue of industrial causation:

> "That issue may run a gamut from the blatantly obvious to the scientifically obscure. If a painter falls to the ground as the result of a scaffold collapse, breaking his leg, common sense dispenses with medical evidence of causation. Other sources of disability are less available to lay discernment. . . . a fatal heart attack, . . . impairment of vision by arc welding flashes . . . the connection between an industrial leg trauma and varicose ulcers . . .
>
> "Examples might be multiplied. They condense into the general proposition that the medical cause of an ailment is usually a scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." *(Peter Kiewit Sons v. Ind. Acc. Com.* (1965), 234 Cal. App. 2d 831, 839.)

Both Board decisions here required expert medical opinion: the decision in 1963 on the issue of whether petitioner's 1962 injury or the normal progress of his congenital condition necessitated the self-procured surgery and the temporary disability; and the decision in 1967 on the issue of whether findings in the

1959 x-rays were sufficient to alter the decision on causation arrived at in 1963.

In the 1963 phase of this case at least, petitioner had some medical opinion, though of doubtful value, in support of his position. But that phase of the case is not before this Court now.

In the 1967 phase of the case petitioner had *no* medical opinion in support of his position; his case rested on no more than his counsel's contentions and slurs upon the operating surgeon. The Board would not have been justified in finding in his favor and was thoroughly justified in finding against him.

D. The Cases Cited by Petitioner in Which His Counsel Has Participated Are Not Authorities for Granting a Writ of Certiorari in This Case.

Petitioner refers to the case of *Mannina v. Ind. Acc. Com.* (1959), 24 Cal. Comp. Cases 148 (petition for writ of certiorari denied by the U.S. Supreme Court in October 1959). In that case counsel for petitioner made many of the same arguments that he makes here, claiming that his client was suffering from a "hidden" injury and that his client was denied due process of law and equal protection of the law because the same rule did not apply to his client as applied to workmen with "visible" injuries. This Honorable Court refused to hear the matter.

Evans v. Ind. Acc. Com. (1945), 71 Cal. App. 2d 244, merely held that where the medical opinions were divided in a dermatitis case as to its industrial causation, depending upon whether the man's entire body

was covered with the dermatitis or whether only the parts that were exposed to the offending material to which he was subjected at work were affected, it was error on the part of the then Commission to exclude lay evidence to the effect that dermatitis was only on the exposed portions of the body and remanded the matter to the Commission for further hearing to permit the introduction of the evidence in question.

In *Cadotte v. Ind. Acc. Com.*. (1948), 86 Cal. App. 2d 754, petitioner's counsel was making very much the same kind of argument that he is making in this case, juxtaposing the testimony of an injured worker against that of the medical witnesses and contending that the then Commission must accept the injured worker's testimony over and above that of the doctors'. The court in that case stated (page 758):

> "We cannot say as a matter of law that the commission must accept the testimony of petitioner as to pain and disability as against that of a medical man, or vice versa. The testimony of each must be considered by the commission and the conflict must be resolved by it. When that is done, this court may not interfere."

The case is obviously not authority for the position that petitioner is taking in this instance.

In the case of *Collins v. W.C.A.B.*, 31 Cal. Comp. Cases 297, the Court of Appeal, First Appellate District, State of California, denied a petition for writ of review on September 26, 1966, and a petition for hearing was denied by the Supreme Court of California on October 27, 1966. In that case, as in this

case, counsel for petitioner contended that the testimony of the applicant and that of the chiropractor who treated her should have been accepted by the Board, which instead relied on the opinion of 8 doctors. These opinions were variously described as "bags of wind, mere guesses and bunk" (p. 299). The question there was the amount of petitioner's permanent disability but the issue as claimed by her counsel was the same as here and the result was certainly not authority for the position that petitioner is taking in the instant case.

III

PETITIONER'S ADDITIONAL CHARGES FIND NO SUPPORT IN THE RECORD.

Petitioner's charges that the doctor was acting omnisciently and that the Board was rubber-stamping his decision and that the courts of California did likewise is without support in the record; the record on the other hand is replete with patient and thorough consideration of all the unsupported charges that petitioner has been making in this matter for the last five years. It is quite apparent that the basic position taken by petitioner in this case is that if a decision is rendered against him, it must be because the law is being misapplied, facts are misunderstood, and a general conspiracy exists between doctors, Board and courts. He cites no authority in California or otherwise to support his position.

CONCLUSION

Respondent Board submits that there has been no violation of the constitutional requirement of due process or equal protection of the laws. Petitioner was given every opportunity to present evidence which might have convinced the Board that its 1963 decision against him should be reopened. He failed to produce that evidence and the logical finding of fact, that good cause to reopen had not been shown, followed. The California appellate courts did not disturb this finding as it was based on substantial evidence.

Respondent Board submits that for the reasons set out above the petition for writ of certiorari should be denied.

Dated, San Francisco, California,
July 31, 1968.

Respectfully submitted,
EVERETT A. CORTEN,
Attorney for Respondent Workmen's Compensation Appeals Board of the State of California.

SELMA MIKELS,
Of Counsel.

(Exhibits Follow)

Exhibit I

Before the Industrial Accident Commission
of the State of California

Claim No. 62 SJ 8761

Joseph I. Moreali,
Applicant,
vs.
Lowell Foods, Inc. and State Compensation Insurance Fund,
Defendants.

FINDINGS AND AWARD
and
ORDER DENYING LIEN CLAIMS

Upon hearing before Alvin L. Dove, Referee, and submission, said Referee now makes his Findings and Award and Order as follows:

FINDINGS OF FACT

1. Joseph I. Moreali, applicant, born December 1, 1923, while employed as a butcher by Lowell Foods, Inc., insured by State Compensation Insurance Fund, on June 16, 1962, sustained injury to the left foot arising out of and occurring in the course of said employment.

2. There is no temporary disability indemnity due applicant as time lost from work did not exceed the normal 7 day waiting period.

3. Disability following the operation of July 31, 1962, was not a result of the injury herein.

4. Applicant is entitled to reimbursement for self-procured medical expenses incurred to cure or relieve the results of the injury herein beginning June 16, 1962, up to July 31, 1962, in an unknown amount to be adjusted by the parties, if such costs have not yet been paid by the defendant carrier. Applicant is not entitled to reimbursement for any medical costs incurred after July 31, 1962.

5. The evidence does not establish that applicant is presently in need of further medical care and treatment to cure or relieve the results of the injury herein.

6. Applicant is entitled to reimbursement for medical-litigation expense reasonably, actually, and necessarily incurred for the testimony of Dr. Josephson in the sum of $50.00, payable to Johnson, Thorne, Speed and Bamford, applicant's attorneys.

7. Lien claims of State of California, Department of Employment, and of California Physicians Service must be denied.

8. No finding will be made on attorney's fee unless requested.

AWARD

Award is made in favor of Joseph I. Moreali against State Compensation Insurance Fund of:

(a) Reimbursement for self-procured medical expenses incurred to cure or relieve the results of the

injury herein for the period June 16, 1962, up to July 31, 1962, in an unknown amount to be adjusted by the parties.

(b) Reimbursement for medical-litigation expense incurred in the sum of $50.00 for the testimony of Dr. Josephson, payable to Johnson, Thorne, Speed and Bamford, applicant's attorneys.

ORDER

It Is Hereby Ordered that lien claim of State of California, Department of Employment filed herein be and the same is hereby denied.

It Is Further Ordered that lien claim of California Physicians Service filed herein be and the same is hereby denied.

Service on: Mar 29, 1963

Alvin L. Dove, Referee
Industrial Accident Commission

State of Calif., Dept. of Empl., P.O. Box 637, San Jose

California Physicians Service, 450 Mission St., San Francisco

Joseph I. Moreali, 501 Raymond Ave., San Jose

Johnson, Thorne, Speed and Bamford, Attorneys-at-Law, 481 N. 1st St., San Jose

Lowell Foods, Inc., 2277 Alum Rock Avenue, San Jose

State Compensation Insurance Fund, 525 GG Ave., San Francisco

Anna Jones

ALD/AJ 8761

Exhibit II

Before the Industrial Accident Commission
of the State of California
Panel 1

Case No. SJ 8761

Joseph I. Moreali,
Applicant,
vs.
Lowell Foods, Inc. and State Compensation Insurance Fund,
Defendants.

OPINION AND ORDER

(Petition for Reconsideration)

Applicant, petitioner herein, contends that need for surgery was due to the industrial injury herein.

Based upon the opinion of Dr. Josephson, treating physician and operating surgeon, it is the conclusion of the Panel that surgery was for a condition in no way affected by or caused by the industrial injury herein (see Allied Compensation Insurance Company v. Industrial Accident Commission (Etkins) 28 CCC 11).

Since the Answer raises no new issues, the Reply thereto is surplusage.

For the Foregoing Reasons,

It Is Ordered that applicant's Reply to Answer to Petition for Reconsideration, filed herein May 9, 1963, be, and the same hereby is, stricken from the record.

It Is Further Ordered that Appellant's Petition for Reconsideration, filed herein April 18, 1963, be, and the same hereby is, denied.

Industrial Accident Commission
of the State of California

Dated at San Francisco, California,
May 13, 1963.

Service: May 15, 1963—S.F.—JMF

Department of Employment—Box 637, S.J.

Calif. Physicians Service—450 Mission St., S.F.

Joseph I. Moreali—501 Raymond Ave., San Jose

Johnson, Thorne, Speed & Bamford—481 N. 1st St., San Jose, Calif.

Lowell Foods, Inc.—2277 Alum Park Ave., San Jose, Calif.

State Compensation Insurance Fund—Personal Service

Before the Industrial Accident Commission
of the State of California

Case No. 62 SJ 8761

Joseph I. Moreali,
Applicant,
vs.
Lowell Foods, Inc. and State Compensation Insurance Fund,
Defendants.

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Applicant's attorney has filed a vituperative petition for reconsideration herein.

Substantially, the facts are simple and as follows: Applicant, a butcher, alleged he stubbed his left big toe joint against a board on June 16, 1962. The evidence revealed that by the time he saw Dr. James Josephson, Orthopedist, on July 25, 1962, the superficial results from the bumping had largely healed. However, there was a congenital deformity for which the Doctor operated. Residuals from the injury did not cause the need for operation, nor light up the difficulty. The Doctor specifically informed applicant of this *before* he operated. By the time he did operate, ten days later, on July 31, 1962, there were no residuals of injury.

The Referee found injury, and awarded reimbursement for medical care to July 31, 1962. No time over seven days had been lost from work because of injury prior to the operation so no temporary disability indemnity was awarded. Medical reimbursement or other compensation for periods following the operation was denied.

Authority for the finding and order was found in Allied Comp. Ins. Co. vs IAC and Etkins 28 ccc 11, decided by the 2nd District Court of Appeal, Division Two, January 15, 1963.

The Referee does not further feel it necessary to answer Mr. Johnson's tirade. It is suggested that, for the best interests of this Commission, its Referees and the members of the Medical Profession who are often forced to appear before us, that Mr. Johnson be warned of the Commission's power, as that of any other Court, to punish for contempt, and request that Mr. Johnson, in the future, keep his language within reasonable bounds.

Recommendation:

It is recommended that it be found, based on the reasonable evidence, the decision as rendered is correct, and that the petition for reconsideration be denied.

/s/ Alvin L. Dove
Alvin L. Dove, Referee

ALD/AJ

PREME COURT, U. S.

FILED

AUG 31 1968

JOHN F. DAVIS, CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI,

Petitioner,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND,

Respondents.

REPLY BRIEF OF PETITIONER

ARTHUR L. JOHNSON,
481 North First Street,
San Jose, California 95112,

Attorney for Petitioner, and, as amicus curiae, "America's Unofficial and Uncompensated Ombudsman" (as such, de facto, for 58 years and recognized as such by California's Governor's office, Speaker's office and the press), "Lincoln's Chief Aide" in the nation (by virtue of parenthood of the idea), "Candle Lighter" and "Champion of Justice and Scientific and Economical Government With a Heart", and, as all of such, representing the 15,000,000 human souls (7,000,000 workers and their 8,000,000 dependents) who will be irrevocably damaged in their entire future by a "Writ Denied" in this vitally important group test case.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI,
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WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND,
Respondents.

REPLY BRIEF OF PETITIONER

"COMMON SENSE DISPENSES WITH MEDICAL EVIDENCE OF CAUSATION"

These eight words in the court decision relied upon by Respondent in their Opposing Brief (Page 17) make it IMPOSSIBLE for this Honorable Court, as will be brought out fully in this Reply Brief, after a proper foundation has been laid, to deny the petition of the 15,000,000 human souls at the bar of the Court on bended knees pleading for justice without, with the

same stroke of its collective pen, blotting out the word "EQUAL" from the front of the sacred edifice from which such a travesty on justice would emanate and substituting therefore the word "TECHNICAL", so as to make it IMPOSSIBLE for me, as I start my seventh nation-wide speaking tour as America's Ombudsman the first of the year, to proclaim to all and sundry, especially to the students in the law colleges of the land I am to specialize on, the phrase Mr. Justice Fortas says the nation should have driven into its ear, by constant repetition, of "CONSTITUTIONAL RIGHTS ARE NOT MERE TECHNICALITIES".

"FISH OF ONE, FLESH OF ANOTHER" DOES NOT SPELL EQUALITY

The eight-word phrase used by the Court in the case brought into this proceeding by opposing counsel *(Peter Kiewit Sons v. Ind. Acc. Com* (1965), 234 Cal. App. 2d 831, 839) epitomizes your Ombudsman's analysis of the situation of a quarter of a century ago when he first encountered the problem first-hand in the enforcement field, after having babied the act in question (California Workmen's Compensation Law) even before it was born by furnishing copies of the Wisconsin law and material in its support to Hiram Johnson, its "Father" in California, in 1910 and writing most of its basic amendments for the two decades he was with the State (1918-38) so as to deserve the pride he felt when then Secretary of Labor Frances Perkins in 1935, in the Opera House at San Fran-

cisco, referred to him as the "genius" responsible for bringing our Workmen's Compensation Law into first place in the nation, being the "Father" of the Small Claims Court Act in California and of all the Prevailing Wage Laws on Public Works in the entire nation, which were made self-enforcing at a saving of hundreds of millions of dollars to the taxpayers of all the States, and of all the rest of the "progressive labor laws coming out of California in the last two decades".

Looking at the matter objectively to see what the main defect in the law here in question was (just as he sought out and helped remedy the two main defects in the Social Security Act, as the nation's most basic statute in the field of the human right to exist, in the period of 30 years, as brought out on Page 43 of the Petition herein, and, with the aid of a young man by the name of Earl Warren, as brought out on Page 48 of the Petition herein, the main defect in nation's laws as to stealing), he found one major defect that overshadowed everything in the proper working of the machinery of Workmen's Compensation and that was that it ground out justice for those with visible injuries and no justice at all or just token justice or, as Mr. Justice Fortas puts it, "technical" justice for those with "hidden injuries" that could not be seen or x-rayed but were often more disabling than the visible kind.

As the nation's Ombudsman he decided to devote the remainder of his life, if need be, to correcting this major defect in the most important of the human rights statutes of the States—the right to existence

itself and food for loved ones—to the Lincolnian "increased devotion" task of correcting this inequality which made the laboring population of 15,000,000 human souls in California dependent for their compensation and medical attention when industrial injury struck the breadwinner upon the plain unadulterated guesses of the men in white robes, with the men in black robes powerless but to nod their heads in approval and say "AMEN", "AMEN", "AMEN", so as to furnish the nation with its prime illustration of the "technical" justice deplored by the new Chief Justice-designate, which they can't eat and which mends no pain-tortured bodies.

Three tasks faced him in this regard, which he tackled in stride, over the quarter-century period, with the following results:

1. Obtaining for the Commission (now Board), power to overrule the doctor-worshipping referees who considered a doctor's "opinion" (now definitely PROVED to be *synonymous* with "guess", out of the *lips of the guessers themselves, due to the power of an oath,* as brought out, with substantiating *undenied* and *undeniable* proof, on Pages 36 to 46 of the Petition) SACROSANCT and predicated their decisions *entirely* on such guesses. This was accomplished by the Ombudsmanic test case of *Evans v. Ind. Acc. Com.,* 71 C.A. 2d 244 (1945), referred to on Page 44 of the Petition and Pages 28 to 29 of the Opposition Brief of Respondents, which brought the handshakes and hearty congratulations from the then Director of the Department of Industrial Relations and the then

three Industrial Accident Commissioners, who included Everett A. Corten, now attorney of record for the Respondent Board in this case, who felt that real progress had been made toward a more workable and more humane workmen's compensation law by the decision, but which power was abused by the present Board, in violation of their oaths of office (which pinpoints the danger of government by men rather than laws, unless curbed by the courts), to do just the opposite by emasculating it and taking all the workability and humaneness out of it, as far as "hidden injuries" are concerned, so as to drop our perfected law from first to fiftieth place in the nation.

2. Getting a definite commitment from the courts in the Ombudsmanic test case, reviewed by opposing counsel on Page 19 of their Brief, of *Cadotte v. Ind. Acc. Com.*, 86 C.A. 2d 754 (1948), approved by the California Supreme Court so many times over the years as to make it a landmark decision, that it is "IMPROPER" for the Board to go by the medical evidence "SOLELY" in making a decision in this hidden injury field, which the Board *specifically, openly* and in *express* terms of "SOLELY" and, even *worse* than medical evidence, "ESOTERIC" or "OMNIPOTENT" evidence, so as to compound its express DEFIANCE of the higher courts of California and so as to pose a challenge to the highest and most respected court in the land as to whether it, too, is to condone this open defiance of a subordinate Board of the two highest courts of California and consider "substantial" and in compliance with "due process"

such "blue sky" evidence, and especially when such "blue sky" evidence is the "SOLE" evidence relied upon by the Referee and the Board, as here.

This word "SOLELY" presents a blind spot to the sweet little lady opposing us as "Of Counsel". In accusing me of intentionally trying to mislead this Honorable Court, as she does on Page 19 of her Opposing Brief, she either does not comprehend what this word means, which is not possible since she doubtless has a college education to be an attorney and this is a grammar school word, or she intentionally twists the meaning of the English language with the agility of a "Go Go" dancer, which latter is definitely the case since she on Page 19 of her Opposing Brief certainly must understand the meaning of such simple words as "EACH" and "MUST" so as to realize that when the second highest court in the State of California, to the repeated applause of our highest court, says that the "testimony of *each* MUST be considered by the Commission", it means EXACTLY THE SAME THING as the world "ONLY", in the paragraph that follows immediately in the Ombudsman decision of 20 years ago (which was omitted by her in violation of the statutory duty of an attorney "*never* to seek to *mislead* the judge or judicial officer by an *artifice* or false statement of law or fact", *California Business and Professions Code Section 6068 (d)*)—(Emphasis added), which reads thusly, on Page 758:

> "However, petitioner contends that the commission refused to consider AT ALL the testimony

of the petitioner on this subject, considering it a subject to be discussed ONLY by medical men. Were this true, the commission would have acted IMPROPERLY. *(County of Los Angeles v. Ind. Acc. Com.,* 14 Cal. App. 2d 134, 137 (57 P. 2d 1341); *Employers' etc. Corp., v. Ind. Acc. Com.,* 42 Cal. App. 2d 269 (109 P. 2d 716.)" (Emphasis added.)

Your Ombudsman's name is in the official record as the attorney who procured this landmark decision and it was won by the "blood, sweat and tears" of borrowed money even then and the "moonlight" labor of one attorney out of the 30,000 in California who takes SERIOUSLY the 8th or last, *but not least,* duty of an attorney under the above quoted California law (subdivision (h)) *"Never* to *reject,* for any consideration personal to himself, the *cause* of the DEFENSELESS or the OPPRESSED". (Emphasis added.) He laid that cornerstone of workmen's compensation in California just 20 years ago in anticipation of the day when he would be able to PROVE that the Commission (now Board) thus acted "IMPROPERLY" (as the Court ruled then he had not fully proved). THAT DAY HAS NOW COME. IT IS HERE—in THIS CASE,—at the bar of this high Court. The "Go Go" twisting tactics barred 15,000,000 workers from victory in their own State courts and I am, as the nation's Ombudsman, going into the matter fully at this climactic point in the history of the Workmen's Compensation Laws of the nation when those of EVERY STATE IN THE UNION are at stake in this proceeding, since they

ALL have comparable "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" provisions that will be invalidated by a *"Petition denied"* in this national group test case where the issue has been squarely presented but unsquarely met, for when our highest court speaks it speaks, often for a few score years, as witness the Dred Scott decision, income tax decision, and others comparable to the case of first impression before this Court, so that such shameful tactics do not deprive some 15,000,000 potential victims of a public attorney's deceit (perhaps 150,000,000 throughout the nation) of their right to "EQUAL JUSTICE UNDER LAW" in the temple that boasts of such justice in enduring marble.

For the purposes of preventing such a tragedy that will disgrace our highest court FOREVER, since there will NEVER be such a ONE HUNDRED PER CENT PERFECT case of NO EVIDENCE WHATSOEVER to back up claims of "SUBSTANTIAL EVIDENCE", "DUE PROCESS" and "EQUAL PROTECTION" in a thousand years to undo the harm that will result from our nation's highest court's approval of the deliberate emasculation of a State statute that means living money itself and curative treatment to restore working capacity to 7,000,000 breadwinners so that they may support their 8,000,000 dependents without the aid the public charity the Respondent Board has decreed for them in this test case in a society that boasts of being a Great or even a Creative Society that CREATES the VERY POVERTY its architects like

your Ombudsman, who has helped build this law from the ground up, has sought for 58 years to destroy, and will fight to do so so long as there is life in his body, even to the extent of borrowing $755.58 for 300 copies of his Petition in this case, and some $1,100.00 to $1,150.00 more for 300 copies of this Reply Brief, for distribution to the public officials, at all levels, who have betrayed the working population of California by emasculating its most precious statute for the protection of those who toil and throwing them, as dignified men and women on employers' payrolls that included 57 years of INSURED protection against the very charity rolls the Board has now by the very decision here under review decreed for them, into the slop kitchens of public relief and hospital beds of public charity, to the everlasting disgrace of those public officials, one of whom now seeks to preserve their violation of the Constitutions of their State and Nation by chicanery that should be as repulsive to the nation's last resort of justice as it was seductive to our State justices.

On Pages 3 and 7 of our Ombudsmanic Petition to this high court I accused the public attorneys opposing me of "pulling a foul punch" by, in the two courts below, "injecting secret evidence which the Referee and Board ADMITTEDLY did not consider, as proved CONCLUSIVELY by their use of the term 'SOLELY', in describing the evidence on which they acted as 'ESOTERIC' ", and " 'below the belt evidence sneaked in on us'." This charge the State attorneys did not deny, so it stands as the truth that

it is. Instead, they repeated these same reprehensible tactics by sneaking this same evidence into their Opposition Brief on Pages 9 and 10 by stating "Mr. Moreali's testimony was further refuted by hospital records which were introduced on his behalf containing a history given by him to a Dr. George Waters on November 14, 1963, in which after mentioning the 1949 surgery Dr. Waters remarked, 'He (Moreali) had some persistent difficulty with the left great toe thereafter.'"

It was plain dishonest for the attorneys to sneak this so-called evidence into a case of this importance, that involves the most sacred right of 15,000,000 people to existence itself when industrial injury strikes, in the lower courts and it was doubly dishonest for them to bring it in again after being accused publicly of undenied unethical conduct in using it in a smug effort to win just "another" court case, by fair means or foul, with no qualm of conscience as to the 15,000,000 human souls betrayed by their diabolical cunning.

So that the Court may understand the TRUE situation in this regard, let me point out that what really happened was that on the very last day of the hearing, over five years after the litigation started that made *two* trips to the State Appellate and Supreme Courts, after days and days of hearings at which the injured worker, his wife and wife's aunt testified under oath that the applicant had had NO DIFFICULTY WHATSOEVER with either his left or right big toe in the thirteen years between the 1949

surgery and the 1962 industrial injury, and after his family physician verified this in the report set forth in full on Pages 44 and 45 of our Petition herein and the offending doctor himself had been forced to acknowledge, *under oath,* for the second time, after many hours of cross-examination, that there wasn't a word in his records showing any difficulty along this line and that the *worker himself* specifically DENIED to *him* when he called on him after the industrial injury on June 16, 1962 that he had ever had any such difficulty in the entire 13 year period, and two x-rays of May 11, 1959 and June 30, 1962 had been introduced to prove, IN BLACK AND WHITE, that there was absolutely no deterioration of the left big toe and that it was in practically normal position at ALL times with a radiologist's report attesting to this (see Exhibits A and B attached to the Petition herein), the voluminous records (commonly known by attorneys and referees as "junk records" because of their lack of bearing on the issues raised) of the O'Connor Hospital were filed in the case in response to a subpoena issued mainly to bring in the incriminating evidence of the practically normal June 30, 1962 x-ray for comparison with the 1959 x-ray (Exhibit A) to prove them exactly *identical,* and were dug into by the hard-put young research artist to see if she could find some dirt to throw onto the otherwise spotless and perfect case of the 15,000,000 people whose rights she was determined to destroy merely to be able to say that she won another individual case, being a case lawyer and not imbued with any compassion for humanity or the rights of the men and

women and even children she set out to destroy and cast onto charity. When she found the eleven words of dirt she could use to throw into the smooth-running wheels of workmen's compensation machinery *she knew as well as she knew she was alive* (she even had their written word for it) that *neither* the *Referee* nor *any of the three Board members* had *ever seen* this report buried deep in the subpoenaed junk material examined by no eyes but hers. It was called to the attention of no one and was not introduced in evidence or marked as an exhibit. Had it been, your Ombudsman attorney would have placed the applicant on the stand immediately to deny that he had ever made such an absurd statement that belied all of the sworn testimony of four witnesses, including the offending doctor, who admitted he told him just the opposite, and the written reports of the offending and of the family doctor (Petition Pages 44-5) and of the radiologist (Exhibit B) and the black and white irrefutable evidence of the x-ray (Exhibit A), and he would have asked for a continuance to suppoena Dr. George Waters in order to make him admit, under oath, that he was just plain mistaken when he hastily dictated these eleven words or used them to protect his close friend, Dr. Josephson, from a malpractice action for performing an unnecessary operation he had to correct by bringing the big toe back to exactly normal position it was in when Dr. Josephson decided to monkey with it for gain instead of merely lancing the toe to get out the pus and fluid that caused the swelling he testified and reported (see Page 44 of Peti-

tion) occurred "immediately" after the proved "industrial trauma".

To show the magnitude of this young lady's sin against society, let me here point out three pertinent facts that she used to deceive our State courts into betraying 15,000,000 human beings: (1) the words carelessly or intentionally tossed into the history section of an operative report were not dug up out of hospital records in *existence* at the time of the first round of hearings in this case so as to constitute *impeachment* material that would warrant the courts in saying that there was a *"conflict"* in the evidence that was resolved by the trier of the facts so as to permit denial of the petition on this ground. It was in an operative report dated November 14, 1963, which is a year and four months *after* the operation of July 31, 1962, which ALL records showed, even the reports, office records, hospital records, sworn testimony of Dr. Josephson, the operating surgeon, was performed on the basis of a case history of *absolutely no discomfort or difficulty* in the prior 13 years, so could not raise a real conflict in the evidence and must be treated as an obvious mistake as in conflict with all the sworn testimony and with what the injured worker told the first operating surgeon, which would make it absolutely ridiculous to later make such a contradictory statement; (2) the Referee and the Board members verified that at the time of their decisions they had never seen or heard of this report deeply buried in the "junk" hospital records in the case, *both* by *failing to mention such a report,* which

they would have jumped at to bolster up their case, and by the use of the word "SOLELY" as characterizing the *"ONLY"* evidence they considered in the case as "ESOTERIC", which word "SOLELY" I here spell out "S-O-L-E-L-Y" so that when the offending attorney sees it she will recognize it and realize the full extent of her perfidy in deceiving the two highest courts in California into believing that it was considered by the triers of the facts so as to raise an issue of fact, which is the only ground they could have had for denying our petition; (3) the procedure in dragging this dead herring into court when it had no legitimate place in the case after the Referee and Board told all and sundry, including our young Portia, *in writing,* that it was going upon the "esoteric" evidence *"SOLELY"* in *defiance* of the Court decision the Ombudsmanic *Cadotte* case here under discussion, itself violated "due process" since it was done by a public official with no opportunity to rebut or cross-examine and in violation of all rules of decency and fair play by that State official.

See in this regard the following high courrt cases which condemn such reprehensible tactics in no uncertain terms as "FAILURE OF DUE PROCESS":

> "Fair play is the essence of due process" *(Galvan v. Press,* 74 S. Ct. 737, 742, 347 U.S. 522, 530, 98 L. Ed. 737-1954, Mr. Justice Frankfurter).
>
> "Due process of law means fair play and is that process of impartial law which is binding because it is right" *(U.S., ex rel. Montgomery v. Ragen,* D.C., Ill., 86 F. Supp. 382, 388, 391-1949).

"Denial of due process is the failure to observe the fundamental fairness essential to the very concept of justice." *(Lisenba v. California,* 314 U.S. 219, 236, 62 S. Ct. 280, 290, 86 L. Ed. 166.)

"Due process of law must be consonant alike with ordinary notions of fair play and settled rules of law." (*Connolly, as Labor Commissioner of Oklahoma v. General Construction Co.,* 269 U.S. 385, 391, 70 L. Ed. 322, 328-1925, Mr. Justice Sutherland, which is the decision which guided me as America's Ombudsman in 1931 to draft the model Prevailing Wage Law on Public Works for the entire nation along constitutional lines.)

" 'Due process' is not measured by the yardstick of personal reaction or the sphygmogram of the most sensitive person, but by the whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process." *(Breithaupt v. Abram,* 77 S. Ct. 408, 352 U.S. 432, 1 L. Ed. 2d 448-1957.)

It is off this bedrock that the little lady twister slipped, along with her superior, who I doubt even read the Brief he signed to enable it to enter the august chambers of this High Court, since I can't believe that he has changed so much in the three decades since we used to lunch together as State officials or even in the two decades since he congratulated me on the *Evans* and *Cadotte* landmark decisions in his life field, when he, as a Commissioner,

was writing progressive decisions by the score *implementing* the *Tanenbaum* rule he has now knifed in the back by signing his name to such perfidy as that exposed herein by your Ombudsman. I know he must take orders from his superiors but that does not excuse him from using the simulated dirt his researcher has thrown into the machinery of workmen's compensation in California over his approving signature, hence my reiterated rebuff to them both.

In closing this polite reprimand to two California public attorneys in a function that our California State Assembly has twice voted to pay an Official Ombudsman $32,000.00 per year, with a million dollar appropriation for staff here in his four-year term, to perform, with constitutionally only such power to reprimand when government malfunctions, let me say that the burden on their souls will be great indeed if this Honorable Court also falls for their cunning in winning cases by chicanery, since this is a "ONCE IN A LIFETIME" case of PERFECTION PERSONIFIED as far as lack of *"substantial evidence"*, *"due process"* and *"equal protection"* are concerned, with only the dead herring dragged across the stage by these two public officials, sworn to protect these very workers in their constitutional rights, to mar the picture of the Goddess of Justice in a white robe transformed into justice without a soul and reasoning with no heart and that challenges credulity.

THE MERITS OF THE CASE ITSELF

This brings us to the merits of the case itself in the light of the 8-word quotation at the head of this Brief that I promised to connect up as being determinative of the issues herein presented and the feeble attempt of the opposition to answer them.

First of all, I desire to point out, *with devastating effect,* that the ENTIRE DEFENSE outlined in the Respondents' Brief in Opposition merely builds up a STRAW MAN to knock down and divert the thinking of the individual Justices of this High Court along immaterial lines.

The immateriality is this: It doesn't make a particle of difference, under binding California adjudications by the scores ever since, and even before, the *Tanenbaum v. Ind. Acc. Com.,* 4 Cal. 2d 611 (1935), decision of Chief Justice Waste and his six associates on our State Supreme Court of 33 years ago, whether Joe Moreali had a bunion on his left foot at the time of the industrial accident or not, or even that it had bothered him after his surgery of 1949, which is not alleged except for the off-hand not-considered and unknown at the time of the decision remark of Dr. Waters that "he had *some* persistent difficulty with the great toe *thereafter",* or even that it was bothering him at the time of his industrial injury of June 16, 1962, which is not even alleged by *anyone* and of which there is NO proof whatever and is belied by all the factual evidence analyzed above, both simulated medical and non-medical. The fact is that he was working regularly without complaint of any kind and

was definitely incapacitated from work by the industrial injury (toe-stubbing), so much so that he couldn't even put his shoe on because of the swelling and pain, all of which was adjudicated by the Referee and admitted by all, but which gave him an empty award because the deciding doctor, the approving referee and the "AMENING" board and justices WENT OFF ON A TANGENT and ignored TOTALLY, COMPLETELY and ENTIRELY the "LIGHTING UP" or "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" rule of the *Tanenbaum* case, which is here reiterated in bold and italicized type so that even the blind can see its searing effect on the case of the opposition and the deaf can hear its roaring thunder of why was not Joe Moreali entitled to the benefit of this rule when EVERY OTHER injured workman in the State of California in the last 33 years and before had been governed by it? Does this Italian-descent flesh make him a fish that should cause the highest court in our land to deny him the EQUAL justice that is his due, or does the heaven-inspired motto our Vice President uttered recently of "EVERY HUMAN BEING IS PRECIOUS" govern all but the Supreme Court of our land, which should be the VERY FIRST to *apply* it and *BLAZEN* it forth for ALL the world to see, hear and heed?

The ignored but binding rule of Chief Justice Waste and his six colleagues on our Supreme Court in *Tanenbaum* reads as follows:

> "It is now *definitely settled* that the ACCELERATION, AGGRAVATION or 'LIGHTING

UP' of a preexisting disease IS an INJURY in the occupation causing the same. *(Eastman v. Industrial Acc. Com.* (1921), 186 Cal. 587, 594 (200 Pac. 17); *Mullane v. Industrial Acc. Com.* (1931), 118 Cal. App. 283, 287 (5 Pac. 2d 483); *Georgia Casualty Co. v. Industrial Acc. Com.,* 17 I.A.C. Rep. 139.) The UNDERLYING theory is that the EMPLOYER TAKES THE EMPLOYEE SUBJECT TO HIS CONDITION WHEN HE ENTERS THE EMPLOYMENT, and that therefore compensation is NOT to be DENIED merely because the workman's *physical condition* was such as to *cause him to suffer a disability* from an injury which *ordinarily,* given a STRONGER AND HEALTHIER constitution, would have caused him LITTLE OR NO INCONVENIENCE. *In such cases* FULL compensation for the ENTIRE disability caused by the injury suffered is recoverable although the physical condition of the employee CONTRIBUTED TO and INCREASED the disability caused by the injury or prolonged and INTERFERED WITH healing and recovery. In other words, there is NO AUTHORITY for PRORATING the extent of the disability due to the accident itself on the one hand and that due to the aggravation caused by the employee's physical condition on the other. *(Hendrickson v. Industrial Acc. Com.* (1932) 215 Cal. 82, 86 (8 Pac. 2d 833)." *(Tanenbaum v. I.A.C.* (1935), 4 Cal. 2d 615, 617—Emphasis added.)

The *Hendrickson* decision (also by a unanimous Supreme Court), cited by our California Chief Justice in this sacred MAGNA CHARTA of workmen's

compensation for *the entire nation* adds this illuminating language that should sear the soul forever of any who would deny its hallowed precept or spit upon its ineluctable logic:

> "The BENEFITS OF THE ACT are NOT ALONE for those in PRIME PHYSICAL CONDITION. The LESS FORTUNATE are EQUALLY entitled to compensation, provided, of course, the injury arises out of and is sustained in the course of the employment. *(G. L. Eastman Co. v. Industrial Acc. Com.* (1921) 186 Cal. 587 (200 Pac. 17); *F. H. Gilcrest Lumber Co. v. Samuel D. Rendler,* 109 Neb. 246 (28 A.L.R. 200, 190 N.W. 578." (Emphasis added.)

This 47-year-old humane and anti-charity doctrine of planned insurance for ALL against the calamity of industrial injury was not applied to Joe Moreali, not because of his name or the color of his eyes but because the Referee to whom his case was assigned caused six years of litigation by refusing to recognize this simple doctrine as the basic rule he cut his teeth on when he became a referee and was so overcome with awe when the man in white robe claiming "OMNIPOTENCE" appeared before him that he said: "I defer to you. You decide the case for me. It is too 'esoteric' for me. I know I have the power, under the doctrine of judicial notice, to rule that the industrial injury which is admitted in this case, did 'ACCELERATE', 'AGGRAVATE' *and* 'LIGHT UP' under Chief Justice Waste's wording, any previous condition or disease Joe Moreali may have had, but when I swore to support the Constitution of my

State and Nation as interpreted by the courts, in the conduct of my office, I did so with the reservation that God comes first and since you speak for God in this matter I must obey you rather than the unanimous courts of nearly half a century, even though they have ALL ruled also that I act 'IMPROPERLY' in so doing 'SOLELY' on your 'ESOTERIC' evidence, and heard you testify with my own ears that 'as far as I was concerned I did not even consider the question of trauma lighting up, his particular condition', so I must consider your evidence as coming from God as an exception to the mere human rule of Chief Justice Waste by which I am not bound, as I do also the unanimous 2-decade Ombudsmen *Cadotte* ruling, in advance, that I am acting *'improperly'*, and thus without *'due process'*, in so doing, as I respect God more than the courts and you claim to be God so I take you at face value."

Even after the Referee had this pseudo-God exposed to him, on Petition to Reopen, by black and white evidence of two separate x-rays taken three years apart (see Exhibits A and B of our Petition) as a perjurer who had performed an unnecessary operation merely for the fee there was in it for him and that had to be corrected back to the pre-operative normal state by another doctor, the Referee persisted in his pseudo-God exception to the down-to-earth human being rule of Chief Justice Waste and his colleagues. The Respondent Board bowed to all this "ESOTERIC" reasoning and made it the law in California to govern California's 7,000,000 workers, and their 8,000,000 dependents, for all time to come in the

future, with State Appellate and Supreme Court approval. If the Supreme Court of our nation now adds its approval, workmen's compensation will be set back half a century in America, as all State laws in this field have comparable "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" provisions whose validity will be thrown in jeopardy and a United States Supreme Court decision is IRREVOCABLE from the practicable standpoint, as a similar case of perfection personified as a test case under "FAILURE OF SUBSTANTIAL EVIDENCE", FAILURE OF DUE PROCESS" and "FAILURE OF EQUAL PROTECTION" could not be found in a thousand years, it representing a quarter of a century of careful building toward the goal of safeguarding our law and keeping it first in the nation, which place it attained when it adopted the no prorating "lighting up" rule in question 47 years ago in the *Eastman Company* case, reaffirmed 36 years ago in the *Hendrickson* case and restated by Chief Justice Waste 33 years ago in the *Tanenbaum* case in immortal, succinct and glorified language that will never die in spite of the knife in the back from the Referee and Respondent Board in this *Moreali* case and the lead in the back from the Board in the *Granado* case cited in our Petition (Pages 31-33) but ignored entirely in the Brief of Respondents *(Granado v. Workmen's Compensation Appeals Board,* 258 A.C.A. 131-136, 1/22/68, 1st Appellate No. 24644, Supreme Court No. S.F. 22,599).

So that our Supreme Court in distant Washington may fully understand the situation here in California

it is being asked to pass upon as it enters this new but supremely important phase of the human rights field it has done such yeoman service in over the years, let me, as America's Ombudsman who has spent his entire life in this and kindred social justice fields, explain the exact nature of the problem that is unfolding before the Court that has been confused no end by the Opposing Brief filed on behalf of the Respondent Board that has been adopted by the Respondent insurance carrier, which Brief not only offends human dignity by its unfair, unethical and unworthy of public officials misrepresentation of the evidence but a like misrepresentation of the law itself as solidified by a half century of building by previous constructive Industrial Accident Commissioners and the higher courts of our State that took seriously the constitutional duty imposed upon them by the special Constitutional Amendments we Ombudsmen of the Hiram Johnson era secured the passage of in 1911 and 1918 to *FULLY* protect *ALL* workers injured in industry, and their dependents, under *ALL* circumstances whatsoever, going so far as to use the word *"ALL"* 7 times, the word "COMPLETE" twice and the word *"FULL"* six times, and ending up with this final admonition to would-be rapists of the sacred policy established that would affect the future lives of most of California's people:

> "to the end that the administration of such legislation shall accomplish SUBSTANTIAL justice in ALL cases expeditiously, inexpensively and without incumbrance of any character, ALL of which matters are EXPRESSLY DE-

> CLARED to be the SOCIAL PUBLIC POLICY of this State, binding upon ALL departments of the State government." (Constitutional Amendment adopted by the people of California on November 5, 1918, to amend Article XX, Section 21 of the California Constitution) (Emphasis added).

Pursuant to this broad and humane constitutional policy ALL enforcement officers and ALL courts went along with its implementation into the fabric of our society and Chief Justice Waste's *Tanenbaum* rule of "industry takes a workman as it finds him" became the SETTLED LAW of the State with proration of disabilities limited strictly to ratings for PERMANENT disabilities as indicated plainly in all the cases twisted intentionally by opposing counsel in their brief in their frantic efforts to make them apply to the instant case, which we desire to make plain to them, although they already know it, and to the Court in case it is misled by their unethical gyrations, is a case involving TEMPORARY disability ONLY, to which NONE of the quotations in the Opposing Brief have any applicability and to which the *Tanenbaum* rule of NO PRORATING of TEMPORARY disability should have been applied WITHOUT QUESTION, there being but *two* known cases of temporary disability in the whole history of California to which it was not applied, the instant case of *Joe Moreali* in which our State Appellate and Supreme Courts were misled by opposing counsel to decide adversely, so as to necessitate this appeal to the nation's highest court, on *stare decisis* penalties to the workmen's compensation laws of every State in the Union unless reversed,

and the case of *Henry Granado* (supra) still pending before our State Supreme Court for September hearing, which will never reach this Honorable Court if we obtain a favorable decision herein but which will throw the entire law into intolerable turmoil if our State Supreme Court decides it favorably to California's 15,000,000 working population and this Honorable Court decides against them, the higher national court prevailing so as to throw the State Court's decision in jeopardy, with no right of appeal from a favorable but empty decision, a situation that would be unique indeed in the history of American jurisprudence to the extent of making a mockery of it and of justice itself.

This case therefore indeed presents the opportunity for a landmark decision for progress in protecting human rights of the most basic sort, the right to very existence itself when industrial injury strikes, or a shamemark one that will throw progress to the winds in the human rights field, set back workmen's compensation half a century and overload the relief rolls of the nation's most populous State, and also of the other 49 States, to the breaking point of perhaps food riots in America and encourage crime in the streets for money to feed one's loved ones deprived of just compensation and rehabilitating medical care for the breadwinner by the nation's highest court, to its everlasting disgrace.

Looking to CAUSES so that effective *remedies* may be devised, let me, again as America's Ombudsman who has given 58 years of study to such cause and

effect problems in government and to devising and securing the adoption of remedies for them, pinpoint the entire difficulty that has arisen in California that will blow over as a "tempest in a teapot" if the Nation's and the State's highest courts CONCURRENTLY decide to restore the pre-Moreali and pre-Granado status quo of domestic tranquility in this sacred right to existence field, or if EITHER of them decides the matter adversely to the working people of the State of California officially, and thus the working population of the entire Nation unofficially, will lead to a new declaration of war, on the casting of human bodies onto the industrial scrap-heaps of the nation, by the Ombudsmen and Lincoln Aides of today, who will fight again this malfunctioning of democracy that creates poverty instead of security, a war that will take us into every law school of the nation, every university, every college, every junior college and every high school to organize the youth of the land to protect the security of their elders the government, in all its three main divisions—administrative, legislative and judicial—has failed to protect.

The CAUSE, at which we will strike first, in such event of an anti-society decision from EITHER court, will be exposed for all to see and read in the form of a PUBLIC ANNOUNCEMENT of the war on the Pillsbury-Waste Tanenbaum ruling of "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" declared by one Roy J. Bell as the new Administrator of the State Division of Industrial Accidents on July 14, 1967, in a press release reproduced in the

attached Exhibit A for the elucidation of the Court (and the 291 others receiving copies of this Reply Brief) under the Court's power to observe such background information under "JUDICIAL NOTICE", the leading cases on which, in the three courts involved in the current proceeding, hold as follows:

> "The COURT may not shut its eyes to WHAT ALL OTHERS CAN SEE AND UNDERSTAND." (*U.S. v. Butler,* 297 U.S. 1-88—1936) (Emphasis added)
>
> "Courts should take notice of whatever is or OUGHT TO BE generally known, within the scope of its jurisdiction, FOR JUSTICE DOES NOT REQUIRE THAT COURTS PROFESS TO BE MORE IGNORANT THAN THE REST OF MANKIND." (*Varcoe v. Lee,* 180 Cal. 338, 345—1919) (Emphasis Added)
>
> "Juvenile Courts CANNOT and WILL NOT shut their eyes and ears to EVERYDAY CONTEMPORARY HAPPENINGS." (*In re Contreras,* 109 C.A. 2d 787—1952) (Emphasis added)

As America's Ombudsman and one of the fathers of the sacred law in question who had nursed it with loving care through its infancy and through 36 years of its adulthood, I hung onto this clipping from the San Jose News of July 14, 1967 and watched the advance sheets in the Appellate and Supreme Courts to complete my eye-opening or education in this regard that the Courts have held it is proper for all those interested in the welfare of their nation, including judges, to do, for the SECRET WEAPON that was to be used to deprive the 7,000,000 workers

in California, and their 8,000,000 dependents, of their "UNDESERVED" benefits, under the Constitutional provision of 1918 that made it, under their oaths of office, MANDATORY on ALL public officials, including Mr. Bell and his Board, to preserve for those very workers, and their dependents, the gains made for them in the workmen's compensation field in the last half century of such compensation, including medical care, decreed by the People of California in their march upward from the "HUMAN INDUSTRIAL SCRAP-HEAPS" of the Nineteenth Century to the zenith of perfection in the field of human dignity that treats men whose hands are soiled by toil, women whose trousers are soiled by grease and children whose diapers are empty for lack of food, as more than mere scraps of iron of whose non-existent souls it cannot be said that "Every human being is precious, even the 'undeserved' and unwanted ones".

The answer came when the "secret weapon" sword was drawn by the Board this same Mr. Bell introduced me to when he invited me, as the veteran workmen's compensation attorney of this area, to see their members installed in office at San Francisco by one of our Supreme Court Justices and heard them expound their fidelity to the oaths they took to *liberally construe* the provisions of the law for the "PROTECTION" of the 15,000,000 wards they became the guardians of the rights of under this most sacred law on the statute books of California, hallowed by the people themselves.

The sword this same Board drew to take the workers of California, and their dependents, off their

employer-from-public purchased *insurance* rolls and place them on the public RELIEF rolls of their Government, pierced the very heart of workmen's compensation itself by a frontal attack upon its most basic precept that its first Commissioner, Arthur Pillsbury, invented as the keystone of its proper enforcement, to wit, the "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" rule.

BELIEVE IT OR NOT, this 47-year treasured life-saving rule of every single Justice and of every single Commissioner and Board member in the last half century, and of every State in the Union, turned out to be the "BENEFIT" the 7,000,000 workers of California, and their 8,000,000 dependents, did not "DESERVE" and for whom the "BELL" tolled.

Granado fell first to the tolling of that Bell and had ONE-HALF ($35.00) of his Legislature-guaranteed weekly compensation of $70.00 taken away from him and his dependents, *plus* one-half of the MEDICAL ATTENTION needed to rehabilitate him and put him back in industry as the breadwinner of his family instead of as the new tax-eater the tolling of that bell created of him (and his family).

Moreali was the next victim of the Bell-ringing "prorating of temporary disability" announcement that brought grief to his family of three by not only taking away *fifty-per cent* of his $70.00 per week employer-purchased COMPENSATION but ONE HUNDRED PER CENT of it, in addition to *ALL* of his MEDICAL ATTENTION, so as to force him onto the *charity* of his *fellow-workers* contributing

one penny out of every dollar they have earned for thirty years to a "TRUST FUND" for off-the-job illnesses or injuries for his $70.00 per week to feed his family, as a plain $2,070.00 "theft" from that sacred fund, and onto his privately carried Blue Shield insurance thus PERVERTED, by Deciding Doctor, Referee and Board ukase, into a free "come and get it" grab of $1,005.00 from that privately-paid-for insurance, in the absence of which two victimized funds he and his family, as well as Henry Granado and his family, would have had to leech onto Governor Reagan's ever-increasing CHARITY rolls, as will millions of other potential victims of the abolition of the "no prorating of temporary disability" rule in the days that are to come unless he, as the national figure he has become, repudiates the funeral-bell tolling for millions of Californians *in his name* as being rung without his sanction, or the Courts and/or the Legislature do it for him.

The writer, as America's impartial, non-partisan Ombudsman, prefers the former course as he has great respect for California's Governor and feels that time will mellow him into a recognized humanitarian with unquestioned compassion for the common man, such as his Legislative Secretary imaged him in his letter of May 9, 1967, attached hereto in facsimile as "EXHIBIT B", giving official recognition and commendation, as the *eleventh* California Governor so to do, to a lifetime of humanitarian public service such as is herein currently being performed in the preparation and distribution of this REPLY BRIEF and the basic PETITION FOR WRIT OF CERTIO-

RARI that preceded it, as Ombudsmanic advice and guidance from the one in the best position in the entire nation to know the facts of life and the dangers of death to the sacred words of California's and the Nation's ELEVENTH COMMANDMENT of "THOU SHALT NOT PRO-RATE TEMPORARY DISABILITY", to the nation's top nine men in the judicial field and 291 of the State's top men in the administrative, legislative and judicial fields, who should *all* JOIN HANDS in the working out of this problem for the benefit of those whose *public servants* they ALL are and millions of whose lives will be blighted by the malfunctioning of our democratic process in this field or will "OBTAIN" the family security and happiness that is the objective of our State Constitution, the Constitution of our Nation permits them to "PURSUE" and our high court judges will deprive them of the right to even *consider* if they deny them the relief sought at their hands in this group test case.

THE "COMMON SENSE" RULE

This rather elaborate foundation, necessitated by having to build "STATUS" along with background material to support it, in order to offset the brazen attempt to make a single case issue with simulated evidence and warped law out of a legitimate group test case, necessitated by a public official attack on a half a century old law that has been twisted out of shape so as to almost totally destroy its effectiveness

in its most essential day-to-day operation to the very people it was intended to serve, so that the Justices of this High Court will not get the impression that I am an impetuous imposter claiming achievements that will be wiped out almost completely if the reprehensible defense tactics in this case succeed and claiming *defensive* insights I have no right to merely to be impressive and thus self-defeating as an egomaniac engaging in idle talk instead of a humble citizen with worthwhile achievements I am trying by this solid defensive maneuver to protect of a major nature of substantial benefit to the nation, and over a period of more than half a century, and with a potential of even greater service to humanity in the days that are to come, in other words, that I am REAL and not a phony in thus fighting back to save our sacred Workmen's Compensation Law from utter destruction in its major effectiveness, that I don't have a Napoleonic complex in claiming to be America's Ombudsman when I am not, in claiming to be the Edison of Government when I am not, in claiming to be Lincoln's Chief Aide in this nation when I am not, in claiming dedicated service to my nation and its people for 58 years, as Justice George A. Sturtevant of the California Appellate Court recognized *thirty-four years* ago by saying: "He is one of the most tenacious, consistent, intelligent, and conscientious individuals in the public service. Keep your eye on him. YOU WILL FIND LOTS MORE TO COMMEND AS TIME ROLLS ON", and as I am sure Chief Justice Warren and at least three members of our State Supreme Court who have known me for

three of four decades (Earl Warren for going on five) will verify, brings us to the connecting up of all this material into a neat package of refuting summarized law and evidence that will give the Justices something to put their teeth in when they go to formulate a decision, after weighing both sides and a complete analysis of the issues in this, their maiden test case in a field more vital to humanity than even the right to speak or the right to live in a certain community, namely, the right to LIVE, *period.*

What we are asking of this High Court, in making such a weighty decision, is merely a recognition of the following basic principles:

1. That absolutely NO evidence at all in a *factual* matter cannot support a decision that there was evidence of a "SUBSTANTIAL NATURE" and thus "DUE PROCESS OF LAW" in this case.

2. That admitted "ESOTERIC" evidence "SOLELY", on which the Referee and Board definitely grounded their decision, *in their own written words,* cannot support a denial of justice based on such evidence from the outside world.

3. That claimed "OMNIPOTENCE" on the part of the doctor who wrote the decision for the Referee cannot justify this High Court in upholding it as coming from God, and thus binding on all mortals on earth, including the Justices themselves, which is what they MUST do to lend their "AMEN" to the doctor's blasphemous decision in this case, unique in the annals of jurisprudence in this regard.

4. That the defense asserted in counsels' Opposing Brief is SIMULATED, both as to *law* and *facts,* is evasive of the main issue involved, which is whether the Workmen's Compensation Appeals Board of the State of California can get away with its INTENTIONAL, PUBLICLY ANNOUNCED attempt to emasculate the very main cornerstone feature of the Act it is sworn to protect and do it by twisted inapplicable diversionary arguments of counsel that not only misrepresent the facts but belie the law.

5. That the rule of "COMMON SENSE" counsel themselves raise on Page 17 of their Opposing Brief as coming from the second highest court in the State of California, which refutes the saying that common ordinary horse sense is getting so scarce nowadays that only the horses have it, should be applied to the case at issue, just as it was when the Supreme Court of the State of California faced this very same crucial issue originally 33 years ago in the *Tanenbaum* case (supra) as to whether it is POSSIBLE to prorate or apportion TEMPORARY disability. The unanimous court in that case realized that it was NOT possible to under any circumstances, and, although it did not say so in so many words, it adopted the rule that "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM" in order to bridge the gap between an ENFORCEABLE and life-giving law and an UNENFORCEABLE one that would in no wise benefit the working population the people of California wrote it into their Constitution to protect. That bridge has now, after 33 years of marching traffic by *REFU-*

GEES FROM POVERTY, been dive-bombed by the Board in the *Granado* case (supra) and in this *Moreali* case, both before high courts for review as to their finality. In our *Moreali* case there was none to protest (see Board's decision on Page 13 of our Petition), but in the *Granado* case there was a vigorous dissent by Board Member Kenneth J. Fryer, who realized what the majority decision of Board Members Morton R. Colvin and Hale Ashcraft was doing to the workability of the Workmen's Compensation Law of the State of California when he said very succinctly and poignantly:

> "I dissent: In my opinion there is no legal basis for apportionment of *temporary* disability and medical treatment in this case. In my view the majority opinion confuses the concept of apportionment of *disability* with the concept of apportionment of *liability.*
>
> "This is not a case in which the industrial injury has caused only a part of the temporary disability in question, and no more. Rather, the injury is a cause of the entire disability such that it is IMPOSSIBLE to segregate any part of the disability as being not causally related to the injury. Under these circumstances, apportionment cannot be justified on the basis that there are causative factors other than the injury." (Emphasis added.)

In our *Moreali* case there was none to shout that key word "IMPOSSIBLE" to the housetops, but an insurance company doctor, later proved by the black and white evidence of the x-ray available to the very eyes of our current reviewers if they will turn to

"EXHIBIT A" attached to our Petition herein, to be an unadulterated faker and a fraud, stepped forward to state, not in effect, but in so many words included in his use of the term "ASSUME SUFFICIENT OMNIPOTENCE" and his avowal of non-adherence to the man-made or court-made rule of necessity that "lighting up" of the previous condition as spelling compensability is the *only* POSSIBLE and workable rule HUMAN ingenuity could devise: "Nothing is *impossible* for me. I have 'OMNIPOTENT' power *possessed by no one else on earth,* so, as God, I pronounce Joe Moreali's industrial disability that caused his toe to swell and pain him so that he couldn't put his shoe on as exactly ZERO with ONE HUNDRED PER CENT of his disability attributable, on a pro rata basis, to the bunion I *admit* lay *sleeping* for *thirteen years* until industrial trauma struck it and woke it up." To prevail in this view this doctor, even though he was glorified by a Referee, three Board members and ten high court Justices in California as the God that he isn't, must be ruled by our nation's highest Court to indeed be God, which I don't believe it will care to do in all sanity and in violation of the First Amendment.

This brings us to the hair-line distinction that opposing counsel have drawn in arguing that the "COMMON SENSE" rule they outline on Page 17 of their Opposition Brief as coming from the State Appellate Court in the *Peter Kiewit Sons* case, in the eight

words that head this Reply Brief, does not extend to *"hidden injuries"*. The Court's full wording is "If a painter falls to the ground as a result of a scaffold collapse, breaking his leg, COMMON SENSE *dispenses with medical evidence of causation.*" What counsel is thus saying is that if the x-ray shows the *slightest* hair-line fracture in the bone of a leg, "COMMON SENSE" makes it mandatory on the Referee, the Board and the Justices to give sacred "JUSTICE" to the injured worker and his dependents, whereas if the x-ray fails to show such a hair-line fracture in the bone of a big toe (as the one of Morea-li's in Exhibit A attached to our Petition herein clearly does not) and fails to show the non-x-rayable *"immediate* swelling and a great deal of *pain* . . . with an *increase of fluid* in the joint" the offending doctor cited who did not know of the materiality of this under the "lighting up" rule in force in California for "ALL" workers (See Pages 18 and 44 of our Petition) for the past half century, and the Honorable Justices of the Supreme Court of our Nation predicate their decision on this hair-line distinction, then I will, as America's Ombudsman, as I weep in solitude in my office workshop over the crushing defeat for 15,000,000 human souls in California and for America's most precious slogan of "EQUAL JUSTICE UNDER LAW", repeat over and over and over again "O JUSTICE WHY ARE YOU SO BLIND?"

OUR CASE IN A NUTSHELL

There you have, Honorable Justices, our case in a nutshell, as to not only "LACK OF EQUAL JUSTICE" but as to "FAILURE OF DUE PROCESS" and its handmaiden "LACK OF SUBSTANTIAL EVIDENCE" on the defense and "LACK OF JUDICIAL NOTICE" and "LACK OF COMMON SENSE" on the offense, all of which are most certainly direct violations of the Fourteenth Amendment to the Constitution of the United States. Our entire case is as simple as that, opposing counsels' cry of lack of brevity and lack of Federal questions to the contrary notwithstanding.

MOPPING UP OPERATIONS

Assuming that the dire calamities pictured above are not going to befall our innocent wage-earning people who toil to build our nation and the sacred slogans of history on which they are entitled to rely, I am, under *"Mopping Up Operations"*, calling the Court's attention, seriatim, to the following gripes of opposing counsel that bear refutation in passing:

1. Page 5. "Jumble of out of context statements" turns out to be *correctly-quoted* statements consolidated for the very brevity purpose counsel first cry for and then cry against, that can have no possible different meaning out of context than in.

2. Page 5. "Disparage the doctor's competence and candor". I not only do that but I flatly accuse him of *proved* deliberate *perjury* and *fraud* in testi-

fying that Joe Moreali's big toe was so subluxed as to "lie *under* the second and third toes" that all the Justices can see, even without their glasses, from the x-ray attached to our Petition as "Exhibit A" was a deliberate falsehood concocted to justify the absolutely unnecessary operation for personal gain alone, on the man's toe, which had to be corrected back to where it was by another doctor.

3. Page 5, footnote. Complaint is made that the very doctor's self-characterized "decision" that formed the basis of all the decisions that approved it was "not, strictly speaking, a part of the record". Now the young lady Portia wants to hide and expunge it as being ashamed of its wording as the "SOLE" evidence she has on which to base her case. In the court below (R. 195) she described it as an "ELOQUENT" exposition of her view that the doctor's "ASSUMED OMNIPOTENCE" (which is concededly the "SOLE" basis of his "decision", by failure to deny this or prove otherwise) is binding on the higher-in-station judges that pased on it.

4. Page 5, footnote. She also wants to keep out the doctor's sworn testimony, which your Ombudsman paid $138.00 of borrowed money to preserve for this High Court, if it calls for it, that, in his *"decision"*, he did not *"even consider* the question of trauma *lighting up* his particular condition", which *in itself,* is *failure of due process"* because, as a result, NONE of the reviewers of his decision did either, so as to bar *Joe Moreali,* as the first California worker to be so barred aside, perhaps, from *Henry Granado* (supra),

from the benefit of this fundamental rule that has been the salvation of the working population in California for at least the last 33 years since *Tanenbaum* (supra) and which has now been completely emasculated and declared null and void in California in this case here under review and in the *Granado* case under review by the highest court of our State.

5. Page 8. The x-rays were not introduced to show that the preexisting congenital condition was non-disabling prior to being "lighted up" by the 1962 injury and it is ridiculous for opposing counsel to say "no expert evidence was offered to support this view". The x-rays (the 1959 and 1962 ones were identical according to the roentgenological reading in Exhibit B so only one was exhibited here) were offered in support of our PETITION TO REOPEN solely to prove Dr. Josephson a flat liar and deliberate perjurer when he testified under oath that the big toe "was UNDER the second and third toe" when he operated and to prove that its position had not changed one iota in *three* years so as to be "NEW EVIDENCE" of a most cogent nature to destroy the God-image of the faking "omnipotence"-claiming doctor that deceived a Referee, three Board members and ten high court Justices into believing that he really had the claimed occult or "omnipotent" power that ALONE could make it POSSIBLE for him as the only human being of the over three billion of this earth to pro-rate temporary disability. The "non-disabling" prior to the injury was proved, beyond peradventure, by the *sworn testimony* of the man, his

wife, his wife's aunt and the otherwise falsifying doctor (who couldn't lie on this since we had him bring his office records into court on two occasions to prove the contrary), by ALL his reports and by the report of the man's family doctor set forth in full on Pages 44 and 45 of our Petition.

6. Page 9. All the opposing counsel's double-talk about the doctor's "static" and "dynamic" jargon is put *completely* out of the case by our Ombudsman's *unaccepted* challenge on Page 24 of our Petition to all and sundry who might fall for such worse than sophistry that saved a doctor from a perjury indictment to try flexing a big toe even under the second toe without even *one* muscle to pull it sideways.

7. Page 9. The injured worker's sworn testimony of 1962 and 1967 that he "had had *no difficulty whatsoever* with his left foot from a few months after the 1949 surgery until the 1962 injury" was NOT "refuted by the very 1959 x-rays on which the petitioner was relying to reopen his case", as opposing counsel is deliberately trying to *mislead* this High Court to believe. The record shows plainly that the 1959 x-ray was taken because of a broken *little* toe stubbed on a chair at home but happened to encompass the big toe so as to *fortuitously* drop into our laps the NEW EVIDENCE to destroy, on PETITION TO REOPEN for that reason, the God-like image of the doctor actually claiming "OMNIPOTENT" power that he didn't possess and actually claiming, *under oath,* power for a big toe to flex sideways, "like a thumb", the doctor swore, that it doesn't possess,

another indictable perjury, provable by 3,220,000,000 witnesses. We therefore chalk this false statement of counsel up as additional frantic desire to win an individual law case by foul means even though the souls of 15,000,000 innocent people are seared in the process.

8. Page 10. The bringing in of the secret "remark" of Dr. Waters was of like nature, as brought out fully above.

9. Page 11. There were no "misrepresentations" of Dr. Josephson's opinions as is falsely alleged. They were *all* stated *accurately* and in his *own* language and they speak for themselves.

10. Page 12. The Petition is "ACCURATE" *in every respect,* in line with half a century of honest practice that has never been impugned before, and cannot be here, as has been attempted by bold, *unsupported* assertion, and has been presented with as much brevity and clearness as is consistent with the importance of this group test case to the people of the entire nation who would be adversely affected, millions of them perhaps to the point of pauperization, by adverse action of the nation's highest court on what was the leading Workmen's Compensation Law in the country until it was emasculated down to 50th place by the two Board decisions on which high court review is being sought. It may not equal the BRANDEIS BRIEF in clarity or sociological data brought in to establish social public policy by judicial decree but that is because of the limitations God placed on the mind of your Ombudsman. He makes no claim to

being a Louis Brandeis and knows that he can nowhere approach him in thinking capacity, judicial expression or elegance and conciseness of language, but he does claim, *and can prove*, that he has been the nation's unpaid and unofficial Ombudsman for the last 58 years of his life that he has devoted to the task, and has been its press-recognized for over forty years "EDISON OF GOVERNMENT" and, of late, Lincoln's Chief Aide since God has favored him, out of 200,000,000 people (except for Raymond Massey), with looks like Lincoln, a beard like his, and thoughts like his he will spend the rest of his life, at 75, implementing into the social fabric of this nation, just as he is spending some $6,000.00 of his borrowed time and some $2,000.00 of his borrowed money to press this group test case for all the people of America to their highest court (with his only hope of financial reward, if he wins, a $335.00 subrogation commission Blue Shield has promised him on the $1,005.00 it spent keeping the Moreali family off the relief rolls of the State when the workmen's compensation insurance system failed them in its emaseculated state), and another $6,000.00 of his borrowed time to implement Lincoln's thoughts on how to make democracy work PROPERLY, and not malfunction as it has with the Workmen's Compensation Act, Juvenile Court Act and Disability Insurance Act, at the legislative level. If he has shortcomings as a scribe in his efforts to gain the STATUS necessary for victory for the American people, his detractors should commend him as public officials sworn to effectuate the very law he is trying to nurse back to life, not to stab him in the

back with false cries of "inaccuracy", and crocodile tears for lack of brevity and clearness in trying to undo all the planned confusion and erase the false pictures they have brought into the case.

11. Page 12. "Opportunity to present" evidence that is thrown into the waste-basket and replaced by "ESOTERIC" and "OMNIPOTENT" evidence "SOLELY" is NOT "due process". It has been ruled not "PROPER", and thus not "due process", in advance, by *Cadotte* (supra) and scores of other high court decisions in the State field, and the Federal Constitution as to "FAILURE OF SUBSTANTIAL EVIDENCE" not being "DUE PROCESS" is just as sacred, if not more so, as the State Constitution, and "EQUAL PROTECTION" is even more mandatory under the Federal than is "All laws of a *general* nature shall have a *uniform application*" (California *Constitution,* Article I, Section 11) under the State.

The complete answer to *pro forma justice* alleged by counsel is Mr. Justice Fortas' "CONSTITUTIONAL RIGHTS ARE NOT MERE TECHNICALITIES". The 15,000,000 people who will be defrauded of their right to live when industrial injury strikes if the Justices of this High Court follow the "PRO FORMA JUSTICE" banner of opposing counsel to their grave, can't eat technicalities so as to keep them from that grave, and all that opposing counsel can offer them as the mouthpieces of the assassins of their sacred formula that has fed them for half a century is technicalities and more technicalities, paper justice, empty justice, distortion,

twisting "Go Go" justice put on for a show, and more of the same. They have not met the ISSUES squarely, *or in any manner at all.* NOR CAN THEY, as they are devoid of ammunition in this regard so shoot pebbles at your Ombudsman. Being weak on the law and weak on the facts they abuse the prosecutor, who has ALL of the law and ALL of the *facts* on the people's side—the facts in *black and white* in the record in x-rays and written words chosen with extreme care by *themselves* so as to brook no misunderstanding, such as "ESOTERIC", "SOLELY" and "ASSUMED OMNIPOTENCE", and the law from the Supreme Court of California in half a century of adjudications, every SINGLE ONE of which (get this) upholds the half-century national and state GOLDEN RULE OF TANENBAUM that "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM", which, rule created the AUTOMATIC POLICEMAN of "THOU SHALT NOT PRO-RATE TEMPORARY DISABILITIES". Have Your Honors seen any denials in the defending brief that the toiler-worshipped *Lena Tanenbaum* was murdered and her policeman husband of fifty years stabbed in the back by the daggers of three Board members in *Moreali* and two in *Granado?* NO. Their Defending Brief answers this block-busting accusation with thunderous SILENCE.

Have Your Honors seen any denials in that Brief that the two x-rays (1959 and 1962, consolidated as identical in our Petition Exhibit A) introduced as "NEW EVIDENCE" so as to sustain, *without question,* under California Law, our PETITION TO RE-

OPEN, completely demolished their "SOLE" decision writer, Dr. J. B. Josephson, as a man of veracity and credence in that they proved, *in black and white,* that he was a wilful and deliberate perjurer when he swore that the big toe had become so subluxed as to lie "UNDER the second and third toe", a falsehood as to which the x-rays speak LOUDER and CLEARER than words and paint him, in the black and white of film, as a man who loves the Almighty Dollar so much that he performed a TOTALLY UNNECESSARY operation for monetary gain alone that had to be corrected back to the normal position of the x-ray by another doctor and thus, under the universally accepted rule of evidence that a witness false in one particular is presumed false in other particulars, so prove, and by the same token, that he did *not* have the self-assumed *"omnipotence"* he claimed to have (which the Referee, three Board members and ten Justices were evidently convinced on the first appeal he did have) and which formed the ONLY basis for his ruling that the Referee-adjudicated industrial injury caused ZERO per cent of his disability of "immediate pain, swelling . . . and an increase of fluid in the joint" (Pages 44-5 of Petition) that needed lancing only to remedy, which fact of non-omnipotence to make a ruling *only* GOD could make is one also of "JUDICIAL NOTICE" (under the cases cited above) so as to clinch the proof of the "NEW EVIDENCE" x-rays and thus win the people's case by default of NO evidence, since, as the Referee and Board found, this x-ray-destroyed evidence was the "SOLE" evidence in the case and the "SOLE" basis

of their decisions upholding the doctor's "decision" based, again "SOLELY", on his "ASSUMED OMNIPOTENCE"?

Or have Your Honors seen one word in the Opposing Brief to explain why "EQUAL PROTECTION OF THE LAW", under the rule laid down by the California Appellate Court decision they rely on at Page 17 (*Peter Kiewit Sons v. Ind. Acc. Com.* (1965), 234 Cal. App. 2d 831, 839) that "COMMON SENSE DISPENSES WITH MEDICAL EVIDENCE OF CAUSATION" should not apply to Joe Moreali? True, he didn't have a hair-line fracture of the leg which it would take an x-ray to discover but he did have, according to the substitute oracle judge who boasts five times in his testimony of having "decided" Joe's case (which he did, beyond peradventure), Dr. J. B. Josephson, "immediate swelling and a great deal of pain . . . and an increase of fluid in the joint", which no x-ray could discover but the human eye and "COMMON SENSE" could. One industrial injury caused a hair-line fracture in a weak leg, the other industrial injury a swollen line on a weak toe. One you could see with the naked eye, the other with the aid of an x-ray only. Yet the swollen line the human eye could see rated "ZERO" on the "guessing-game" scale of justice, and the other one requiring the aid of an x-ray to discern rated ONE HUNDRED PER CENT on the scale of "SUBSTANTIAL" justice guaranteed BOTH these industrially injured workers by our California Constitution quoted above and guaranteed also by our "EQUAL" and "DUE PROC-

ESS" Justice the Federal Constitution mandates. Can any of the nine most brilliant judicial minds in the nation explain to a stupid Ombudsman like myself by what devious labyrinth of hieroglyphics they can arrive at a decision to dump Joe Moreali and his 14,999,999 co-petitioners into the sea of poverty in California, assuming (1) that the same sacred inscription appears over the door of their Temple of Justice as graced it during the seven years your National Ombudsman spent in the Federal humanitarian field at the Nation's capital a quarter of a century ago; (2) Mr. Justice Fortas' preachment of "CONSTITUTIONAL RIGHTS ARE NOT MERE TECHNICALITIES" is the prevailing view of the nine Hon-Honored Justices; (3) the unanimous California Supreme Court *Tanenbaum* half-century GOLDEN RULE of "ACCELERATION", "AGGRAVATION" or "LIGHTING UP" still has a spark of life left in it in spite of the steel and lead in the back of the Respondent Board's *Granado* and *Moreali* decisions; (4) the corollary unanimous California Supreme Court rule of *Hendrickson* (supra) that the "BENEFITS of the ACT are NOT ALONE for those in PRIME PHYSICAL CONDITION, the LESS FORTUNATE are EQUALLY entitled to compensation" still breathes as the child of *Tanenbaum;* and (5) that our Highest Court has not overruled the doctrine of *Richfield Oil Corporation v. State Board of Equalization,* 329 U.S. 69, 84, 67 S. Ct. 908, 89 L. Ed. 1209 (1946) that these constructions, *"being a matter of state law",* are "BINDING ON US" but

"is NOT determinative of the question whether the tax" (attempted abolition of the two above rules in the instant case) "deprives the taxpayer" (injured industrial worker here) "of a FEDERAL right", which "issue turns not on the characterization which the state has given the tax" (attempted abolition), "but on ITS OPERATION AND EFFECT"?

We hope and pray that our revered most high court will meet this issue head on and not leave 15,000,000 petitioners dangling in the noose of "PETITION DENIED" without being granted a last dying wish to be informed of the nature of the offense that warranted this mass murder of a populace.

12. Page 13. Opposing counsel again seeks to confuse our highest court by turning our sacred landmark *Tanenbaum* decision in California into just another case of factual distinctions on the merits of the individual case before the court. That isn't the way our courts operate in California. Their long-range view of the law as a living, growing thing gives foresight to their opinions. They agree with former Justice B. Rey Schauer of our Supreme Court that "IF SOMETHING IS RIGHT IN PRINCIPLE, THE COURT WILL FIND A WAY TO MAKE IT THE LAW". This is done oftentimes by *dictum,* as was the case in *Tanenbaum* and *Cadotte,* both landmark cases that shaped the history of workmen's compensation in California along humanitarian lines that were "RIGHT" and that *protected* the vast groups of people the Legislature, and the people themselves by Constitutional Amendment, intended to protect, because the court

had COMPASSION for them and didn't want to throw them to the wolves, as is the case of the new ideology that has grown up in California of late to the effect that the worker-wards of the Board don't "DESERVE" such protection (See EXHIBIT A attached hereto), of which philosophy *Henry Granado* and *Joe Moreali* were the first two victims and thus find themselves at this moment before the highest court of our State and the highest court of our Nation as the guinea-pigs for 15,000,000 human souls, all of whom are "PRECIOUS" according to our Vice President, not "undeserving" of the life-giving benefits the war is on to deprive them of and to throw them onto charity.

Representing the deprivers, our opponents, as their legal mouthpieces, are forced to rely on the *dead* part of the *Tanenbaum* decision that deprived the injured employee of a full PERMANENT disability award because some doctors "guessed for hire" that half her PERMANENT disability was due to her previous arthritic condition, a situation fraught with danger within itself due to the overlooked fact that the "guesses" ordinarily are measured by the yardstick of who is paying the bill for them and gaining the goodwill in the way of lucrative operations and patient care that bring Rolls-Royce cars, cruising yachts, spacious summer homes and heated swimming pools, as witness the wild "guess" of the leading carrier "guesser for hire" in the *orthopedic* field in Northern California your Ombudsman pinned down as such of "80 to 90 per cent" for minimal arthritis, as exposed

on Pages 36 to 43 of our Petition, and as further exposed by your Ombudsman in the previous workmen's compensation case he took to this High Court nine years ago (*Mannina v. Ind. Acc. Com.*, No. 578, October Term, 1959), in which he finally won a $90,000.00 award, on PETITION TO REOPEN by the *power of an oath,* in forcing the biggest carrier expert in the *neurological* field in Northern California to admit that he, too, was just "GUESSING" in *ALL* his opinions in these "HIDDEN INJURY" cases. (See Pages 36-7 of our Petition herein.)

It may take another nine years for a proper foundation to be laid and to educate the Referees, Board and Courts to a full realization that the terms *"opinion"* and *"guess"* are SYNONYMOUS in these "HIDDEN INJURY" cases, and thus bribe-tainted, but some day your Ombudsman, and the Ombudsman for the people involved, is coming back into this High Court with a proper test case on the *dead* or PERMANENT disability phase of the *Tanenbaum* case with the hope of having less and less weight given to wild purchased guesses or money-talking "bags of wind" (as I PROVED them to be *literally* in the *Mannina* case, all three of them that were brought into court, on an *actual* scale of justice, for the first time in the history of American jurisprudence, balanced by the "FACTS" on the other side of that scale (see Page 9 of our Petition in the *Mannina* case, supra), that tip the scale of justice unduly in these hidden injury cases, in fact, throw it entirely out of balance, since the poor can't bribe their witnesses with cars and

swimming pools and can rely only on the solid FACTS of injury, which get them nowhere, especially when the guessing doctor is given the status of God, whom no mortal can question, as in the instant case.

But that battle to down-grade bribe-tainted "GUESSES" as evidence in PERMANENT disability rating cases is for another day and another forum, and is not involved *directly* in the current proceeding, unless this High Court should see fit to take the bull by the horns and condemn in a *dictum* if necessary, as our farseeing courts in California do, "GUESSWORK" justice in general, in which this "out of the blue" case presents a golden opportunity for giant strides in this field of protecting the sacred precepts of justice while at the same time giving the people everyday eating justice.

Right now we are concerned with the "no-rating of TEMPORARY disability" dictum, or *living* part of the *Tanenbaum* case (as quoted above), which is just as live today, except for the stab wounds of *Granado* and *Moreali,* as it was the day when uttered by Chief Justice Waste for the guidance of our State, and of our Nation, since all other States in the Union have adopted it as the polar star to guide progress toward greater and greater security in this most precious field of human rights.

So don't get alarmed at the frantic efforts of counsel to win this case for victory's sake over the dead bodies of millions by citing the *dead* portion of the *Lena Tanenbaum* permanent disability rating case that does not apply to our current case of TEM-

PORARY disability, which is governed by the more humane rule the Chief Justice laid down as *dictum* but has become law in California by adoption in thousands upon thousands of cases in the three decades that have passed since then, to the benefit of the people of California in millions upon millions of dollars worth of eats and living and medical expenses and joy galore for millions of California families instead of the tears of sorrow that would have been theirs had Chief Justice Waste and his six associates on our Supreme Court turned out to be "DEPRIVERS" or destroyers to make democracy *malfunction* instead of BUILDERS to *perfect* her sacred precepts. Lena Tanenbaum was merely the guinea-pig or vehicle our State Chief Justice and his unanimous court went out of their way to use, in a *dictum* that has become *dicta tibi est lex* (the law has been declared to you) by *thousands* of later adjudications in the three-decade period it had successfully spanned until it ran up against the intentionally overruling Board in *Granado* and *Moreali,* as a means of RESTATING the law of the previous two decades so as to make it an even half century of solid law that the Board butted its head against, successfully, so far, in this *Moreali* case because the original decision was written by God himself, or one who fraudulently posed as being "OMNIPOTENT", who testified under oath that when he made the decision he *"didn't even consider"* (see Page 18 of Petition for exact wording of the decision) the man-made rule of *Tanenbaum.* Just so can the Nation's Chief Justice and his eight associates (it is to be

doubted that any will dissent on the only ground open, that the doctor really was God), if they want to make a GIANT half-century stride in vitalizing the law and implementing the Constitution as it enters this most sacred segment of the human rights field, overrule this doctor with the flat declaration that he was not God and did not have the claimed "omnipotent" power so that a decision predicated on this assumption "SOLELY", with no other evidence considered in the case, was "IMPROPER" (so as to make the dictum in our Ombudsman *Cadotte* case FEDERAL LAW) and thus not "SUBSTANTIAL EVIDENCE" in accord with "DUE PROCESS" (so as to make the *dictum* of our Supreme Court in *Tanenbaum* FEDERAL LAW by ONE STROKE of the pen of the most revered court in the nation). This much the 15,000,000 petitioners at the bar of this court are entitled to as *the very least* their highest court of justice can do for them. If the court decides to go further and rule that DENIED justice "SOLELY" because the industrial injury *raised* rather than *penetrated* the skin so as to bar him from the rule that the opposed-to-*Tanenbaum* Board cites on Page 17 of its Brief as being the Appellate Court determined law as to those with visible or x-rayable injuries of "COMMON SENSE DISPENSES WITH MEDICAL EVIDENCE OF CAUSATION" is not the "EQUAL" justice that court advertises to the world in front of its building, and thus not "EQUAL PROTECTION OF LAW", its decision could be couched in such simple Abraham Lincoln language that, like his Gettysburg Address and like Chief Justice Waste's

Tanenbaum rule, it would be revered down through the ages and memorized by every law student as more cogent and vital to all of America's 200,000,000 people than Chief Justice Marshall's *Marbury v. Madison* decision that they all read when they enter the field, and would become the decision of the century that "HUMANIZED" the law and the Constitution.

If it goes still further, and follows the *dictum* route of the California Appellate Court in *Cadotte* and the California Supreme Court in *Tanenbaum* in implementing human progress toward the universal goal of "EXACT JUSTICE FOR ALL", an elegantly-worded attack on "GUESSWORK JUSTICE" (which is the antithesis of all that the Supreme Court stands for) would inspire every student of the law in all the years that are to come to consider the law as more than a ditch-digging means of making a livelihood and rather a growing, living instrument of progress toward humanitarian goals that will implement the *twain* objectives of the Constitution of "PROMOTING THE GENERAL WELFARE" and permitting the free from blood-sucking leeches "PURSUIT OF HAPPINESS". In that event our highest court would raise the banner of "EXACT JUSTICE UNDER LAW" as equal to and consistent with "EQUAL JUSTICE UNDER LAW" for all to see and read and thus reverse the trend toward PURCHASED justice that one District division of our State Appellate Court in *Peter Kiewit Sons. v. Ind. Acc. Com.* (1965), 234 Cal. App. 2d 831, 839, cited by the Offending Board in its Brief on Page 17, even attempted to start a crusade for when it said, in

what is perhaps the most self-contradictory decision in all history, on Pages 839-840: "Back disabilities in particular *shout* LOUDLY for expert advice . . . in a field which FORCES the EXPERTS into HYPOTHESIS" (emphasis added). We pray for God's guidance to our High Court as it ponders all these factors in this most crucial decision of this century that will affect the lives not only of our teeming millions in America today but of the generations yet unborn in our ever-increasing population.

13. Page 14. If fortuitously supplied x-rays that PROVE, in *black and white,* FOR ALL BUT THE BLIND TO SEE, that the self-proclaimed "GOD" the Referee *delegated* his DECISION WRITING to, had feet of clay, hands so greedy for gold that they would perform an unnecessary operation to "correct" a fake defect that didn't exist, so as to incapacitate a workman with a family to feed for three months, and then for another three months to recover from the second surgery necessary to restore the toe to the original 13-year position shown in two x-rays taken three years apart, and a psychosis that caused him to proclaim himself as "OMNIPOTENT" and thus able to "ascertain the COMPONENT industrial and non-industrial factors of this particular disability" (Page 18 of our Petition), something that it is absolutely IMPOSSIBLE for any other human being out of the 3,220,000,000 on the face of this earth to do and which fact of inseverability the Supreme Court of our State ruled, in effect, CANNOT be pro-rated by any court so must be taken for what it is, an INSEPARABLE

disability and thus entitled to the necessities of life, including medical attention until it reaches its *permanent* disability state, in which case alone can it be DIVORCED (a sound, sane, workable, feasible and just rule which, if the Highest Court of our Nation abolishes in this group test case, it will be responsible for the years of turmoil and plowing in the sea of poverty for a *workable* substitute which could, UNDER NO CIRCUMSTANCES, be JUST), is not "GOOD CAUSE TO REOPEN" under a law our State Constitution requires a *"liberal construction"* of and Federal rulings of our High Court from time immemorial mandate of liberal construction of as being "remedial" as for the relief of human suffering, then I, as your National Ombudsman, question the dictionary definition of GOOD as *"of commendable quality or character"* and CAUSE as the "purpose for which a thing is done", that of the courts being to save human souls from poverty and that of the Respondent Board we are asking this High Court to overrule being avowedly, BY PUBLIC PRONOUNCEMENT (EXHIBIT A, attached hereto), to cast them onto poverty as "UNDESERVING" of the insured protection the Constitution of California and the Legislature have provided by express enactment and the Courts have implemented by humane rulings that have WORKED effectively toward that protective end for half a century.

14. Page 16. Our opposing attorneys are again reviving the old cry of laches the Referee and Board raised and then abandoned because it fell of its own

weight, not only as inequitable but because the Legislature of California has given an injured worker exactly five years from the date of injury to file a *timely* "PETITION TO REOPEN", which your Ombudsman did here exactly thirty minutes before his time expired and did it only by working day and night for two solid weeks on the PETITION TO REOPEN so as to raise all constitutional issues at the ground level and present them in such a manner that they would be reviewable in the higher courts of our State and Nation. Authorities were cited in the courts below to show that the doctrine of laches did not apply to this 5 years allowed by law that cannot be shortened by court decree, and in the last pleadings of our opponents the issue was dropped, only to be raised here again because of the weak defense on the merits.

In explanation of the delay, so that this High Court will not get the impression that I am a loafer who slept on the rights of my client, and the silent but visualized by him millions dependent upon action by him to protect their rights, will state that I personally took the stand at the first hearing on our PETITION TO REOPEN and explained to the Referee, *under oath,* that as a combined family-supporting attorney and free Ombudsman for the nation, at a saving to my State of a quarter of a million dollars a year for staff hire by employing myself as my own three assistants in wearing legislative, judicial and administrative hats, I am the hardest working attorney of the 300,000 in the nation, bar none, since for the last five

years I have, at the age of 75, worked day and night, Saturdays, Sundays and holidays, the 24-hour clock around, except for snatches of sleep in my big leather arm chair with my feet on another leather chair and my overcoat over me for warmth, and three meals a day in the little kitchenette adjoining my office, with no vacation for 8 years, and only the comics for recreation, to keep a breast of my law practice that feeds a wife and puts a third son through college while acting *concurrently* as the nation's unpaid Ombudsman, in which capacity I processed, during the 5 year period, 19 other test cases before the lower courts and at the administrative level, 8 test cases at the Appellate Court level, 8 curative measures before the 1965 Legislature, 16 at the 1967 session, 6 at the 1968 session and have 14 already drawn and approved by the Legislative Counsel for introduction at the next 1969 session. I knew that when I started this case I would have to be prepared, financially and timewise, to carry it clear through to Your Honors and it has meant borrowing $350.00 on my Bankamericard, $2,200.00 on my remaining $10,000.00 of life insurance and $800.00 otherwise toward the $2,000.00 costs and $6,000.00 of lost office time that I will be out as a result of playing free Ombudsman to 15,000,000 people in this case in which I am being so bitterly assailed by the destroyers of their rights on every flimsy pretext that they can find. If my efforts are in vain because of their chicanery then it will be "love's labor lost", and a Gettysburg battle lost on the national front, but with a war ahead to win, which I will tackle with renewed vigor the day the Legislature opens at the dawn of the New

Year, which will be a bleak one for California's teeming millions cast onto our charity rolls by the Supreme Court of our nation and perhaps millions elsewhere in the nation until I can build STATUS enough to extend my Ombudsmanic activities to their States.

Right now they are limited to the State of California and on January 2, 1969, I will cause to be introduced, along with a dozen or so other remedial measures in the field of people's right to exist when calamity strikes, the two remedial measures in the workmen's compensation field attached hereto as EXHIBITS C and D, which will be introduced for the FOURTH TIME in spite of the warning from the Chairman of the Assembly Subcommittee on Workmen's Compensation that his committee did not look with favor upon my "repeat" introduction of these bills they have turned down so many times. Little does he know that they are the most vital bills of the decade to save the Workmen's Compensation Law his subcommittee is supposed to protect from emasculation and that if they had been approved three sessions ago *Granado* would not be before our State Supreme Court on bended knee and *Moreali* and his associated millions would not be before Your Honors on bended knees and with upraised hands pleading with this High Court to remedy the malfunctioning of our legislative body as well as of the administrative body and approving courts in this most sacred corner of our democracy—its LIVING room.

A PLEA FOR EXECUTIVE, LEGISLATIVE AND JUDICIAL COOPERATION

This brings us to our concluding plea in this ONLY test case to ever come before our highest and most sacred court in this most sacred field of human rights in the 180 years of its existence.

Our plea is to the Executive Department first of all, to California's Governor, who is on the list for both Petition and Brief, to repudiate publicly the reversal of California's half-century humane policy issued in his name (EXHIBIT A) that tore the cornerstone out of the workmen's compensation structure we builders of Hiram Johnson's day placed there with such care to endure forever.

Our next plea is to the Legislature to restore that cornerstone before the entire structure topples of its own weight, to the Speaker, whose office has also recognized me as "AMERICA'S UNOFFICIAL AND UNCOMPENSATED OMBUDSMAN", who could not only tell the committees he appoints to get wise to what's going on in the world and give us a hand in our five-year battle to repair the 57-year old eroding structure before it is too late, but could remove some of the roadblocks to progress that cause such expenditures as $8,000.00 of my time and money as this appeal to the highest court in the land (which is borrowed Ombudsman money, not taxpayer $32,000.00 per year, plus a quarter of a million per year for staff, he wants to pay to an Official Ombudsman as a free Civil Public Defender to handle the dog-bite gripes of the rich while the poor starve because he

permits his committees to sanction, by their silence, cutting their Legislature-set $70.00 per week compensation and full medical attention to $35.00 per week and half medical expenses (as with *Granado*) or $00.00 per week and no medical expenses (as with *Moreali*) on the mere say-so of an under-oath proved "GUESSING DOCTOR FOR HIRE" or professional testifier, one of whom even poses as God to overrule the Legislature, and gets away with it, clear to our very highest court.

I say to the Speaker, who is on the list for copies of both Petition and Brief, along with each legislator in any way involved, that if the two life-saving measures we introduced this year through his Majority Floor Leader but were thrown in the waste-basket, attached hereto as EXHIBITS C and D, and the other measure we introduced through him to keep our own State Government from defrauding 6,000,000 workers, and their 8,000,000 dependents, by a dishonest 28-day Statute of Limitations on claims for off-the-job disabilities, and the two measures to cure the two main defects in the Juvenile Court Act (one of which even applies the civil or animal rule, of "preponderance of evidence", to the sacred right of children to freedom), are not passed by the next Legislature before the Easter vacation, I will personally charter four busses (instead of the four cars we used in the 1965 Legislature to the scorn of the subcommittee on workmen's compensation) to haul those of California's school children we can interest in the work of humanity through our educational campaign

as LINCOLN AIDES (adults seemingly are interested in only two things in life — — MONEY and PLEASURE) to Sacramento to demand the right to be heard, through their Ombudsman trying to protect them and their parents in their basic constitutional rights in these three fields of human rights that touch the lives of all of California's 20,000,000 people, and I'll have large signs painted on these busses to read: "LINCOLN AIDES EN ROUTE TO SACRAMENTO TO MAKE DEMOCRACY FUNCTION PROPERLY".

With the courts, such mass exercise of the right of the people (and children are people in spite of being classed with dogs as to their most precious right to "LIBERTY") "peaceably to assemble, and to petition the Government for a redress of grievances" *(Amendment I, United States Constitution)* cannot be exercised directly. But it can be exercised with the pen ("which is mightier than the sword", according to those in the know) and when that pen is wielded by their Ombudsman, trained in the ways of the world, and of Government, in all fields, for 58 years, admitted to the Bar of his State and of the Nation so as to entitle him to walk into the door of this High Court, Lincoln beard and all, bearing the torch for 15,000,000 people, those people are themselves in court, en masse, and are raising their muted voices in silent protest and supplication to the judicial branch of their Government for the redress of their grievance that the administrative branch of their government has taken the very heart out of their

most protective statute while their Legislature sits with folded hands watching it being emasculated to the point of impotency as far as real protection is concerned, and their State courts nod their heads in unthinking approval, even of the basic premise of the emasculation, namely, that God himself in the form of a human being with powers of "OMNIPOTENCE" has spoken. Should our Highest Court give its benediction to this scene, Heaven help the poor working people of America. We, the people, pray that the ink will dry on the pen that would inflict such a dire calamity upon the nation.

Dated, San Francisco, California,
August 26, 1968.

Respectfully submitted,
ARTHUR L. JOHNSON,
Attorney for Petitioner, and, as amicus curiae, America's Unofficial and Uncompensated Ombudsman, Lincoln's Chief Aide in Making Democracy Work PROPERLY, Candle Lighter, Torch Bearer and Champion of Justice and Scientific and Economical Government with a Heart, and, in these capacities, representing all of the 200,000,000 people of the nation, whose interests will be affected, in one way or another, by a devastating blow of "Writ Denied" in this group test case on behalf of humanity in general.

(Exhibits Follow)

EXHIBIT A

★★★ San Jose News 45 Fri., July 14, 1967

Payment Policy Hit

State Compensation Benefits Assailed

LOS ANGELES (UPI) — The new administrator of the State Division of Industrial Accidents said the Reagan administration wants to put a stop to cases of employes receiving workmen's compensation for reasons not arising from employment.

Roy J. Bell, appointed to his post by Gov. Reagan, said Thursday that employer costs of workmen's compensation benefits have jumped 91 per cent since 1960.

He attributed a substantial part of this increase to workers receiving benefits they were not entitled to under the law.

Bell said that under former Democratic Gov. Brown's administration, "certain decisions were made (in industrial accident cases) which extended coverage of the law beyond the intent of the Legislature."

He said the Reagan administration wants to put a stop to such cases.

Bell said he could not estimate the number of cases in which "undeserved" benefits were paid but said the number was substantial.

EXHIBIT B

State of California

GOVERNOR'S OFFICE

SACRAMENTO 95814

RONALD REAGAN
GOVERNOR

May 9, 1967

Mr. Arthur L. Johnson
Executive and Legislative Secretary
General Welfare Federation of America, Inc.
Suite 5, Terrace Building
481 North First Street
San Jose, California 95112

Dear Mr. Johnson:

Governor Reagan has read your letter of March 20 with its enclosures, and has asked me to thank you for sending it to him.

It is most evident that you have waged a long and intensive career as "America's unofficial and uncompensated Ombudsman".

Sincerely,

Vernon L. Ellingson

EXHIBIT C

ASSEMBLY BILL No. 2033

Introduced by Assemblyman Zenovich

April 16, 1968

SECTION 1. Section 4663 of the Labor Code is amended to read:

4663. In case of aggravation of any disease existing prior to a compensable injury, *permanent disability* compensation shall be allowed only for the proportion of the disability due to the aggravation of such prior disease which is reasonably attributed to the injury. *It has always been the law in California that temporary disability compensation and medical treatment are not to be denied an industrially injured workman merely because he is not in perfect physical condition when injured, that industry takes him as it finds him, and that any "lighting up" is fully compensable.*

EXHIBIT D

ASSEMBLY BILL No. 2032

Introduced by Assemblyman Zenovich

April 16, 1968

SECTION 1. Section 3202 of the Labor Code is amended to read:

3202. The provisions of Division 4 *(commencing with Section 3201)* and Division 5 *(commencing with Section 6300)* of this code shall be liberally construed by the courts *and by the Department of Industrial Relations and its divisions, boards and referees* with the purpose of extending their benefits for the protection of persons injured in the course of their employment *and their dependents. In making any determination, lay testimony as to the facts shall be weighed along with any opinion evidence and judicial notice of any self-evident facts shall be taken.*

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1968

No. 274

JOSEPH I. MOREALI,

Petitioner,

vs.

WORKMEN'S COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA, LOWELL FOODS, INC. and STATE COMPENSATION INSURANCE FUND;

Respondents.

PETITION FOR REHEARING

ARTHUR L. JOHNSON,
481 North First Street,
San Jose, California 95112.

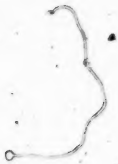
Attorney for Petitioner, and, as amicus curiae, "America's Unofficial and Uncompensated Ombudsman" (as such, de facto, for 58 years and recognized as such by California's Governor's office, Speaker's office and the press), "Lincoln's Chief Aide" in the nation (by virtue of parenthood of the idea), "Candle Lighter" and "Champion of Justice and Scientific and Economical Government With a Heart", and, as all of such, representing all of the 200,000,000 people of the nation, who will be adversely affected, beyond repair, under the doctrine of stare decisis, if the "WRIT DENIED" is allowed to stand in this case in conflict with the just enunciated NEW RULES of the California Supreme Court on this entire subject.

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Respondents.

PETITION FOR REHEARING

INTERVENING CALIFORNIA SUPREME COURT DECISION MAKES REHEARING IMPERATIVE TO LIBERALIZE WORKMEN'S COMPENSATION LAWS OF ENTIRE NATION

Rule 58 of this Honorable Court, permits a PETITION FOR REHEARING in Certiorari cases in which there are "intervening circumstances of sub-

stantial or controlling effect (e.g., *Sanitary Refrigerator Co. v. Winters,* 280 U.S. 30, 34, footnote 1, 50 S. Ct. 9, 10; *Massey v. United States,* 291 U.S. 608, 54 S. Ct. 532), or other substantial grounds available to petitioner although not previously presented (e.g. *Schriber-Schroth Co. v. Cleveland Trust Co.,* 305 U.S. 47, 50, 59 S. Ct. 8, 9)".

BOTH phases of this rule have been lit up in neon lights in this case by the intervening (just available since the PETITION FOR WRIT OF CERTIORARI was denied herein on October 14, 1968) California Supreme Court 6 to 1 (Mr. Justice McComb alone dissenting) in bank *landmark* decision of October 4, 1968 in the California test case of *Granado v. Workmen's Compensation Appeals Board,* 69 Advance California Reports of October 18, 1968, Page 408 (referred to as pending on Pages 31 and 33 of the PETITION FOR WRIT OF CERTIORARI herein and on Pages 22, 25, 35 39, 45, 48, 53, 60 and 62 of our REPLY BRIEF), which new decision resolved ALL angles to the problems herein presented by decision of the State's highest court, which thereby AUTOMATICALLY BECAME BINDING on this Honorable Court under the doctrine of *Richfield Oil Corporation v. State Board of Equalization,* 329 U.S. 69, 84, 67 S. Ct. 908, 89 L. Ed. 1209 (1946), quoted on Pages 6 and 7 of our Petition herein that 'that construction is BINDING on us". (Emphasis added.)

In other words, the Supreme Court of California, by *interim decision,* since this matter was submitted, having spoken on EACH angle to this important test

case, its decision is binding on this High Court if the doctrine of the *Richfield* case is still the law of this land, and it is, unless a denial of this PETITION FOR REHEARING puts it in jeopardy.

Denial would, in addition, put in jeopardy the workmen's compensation laws of the entire nation since it would, in effect, be a repudiation of the California Supreme Court's liberal interpretation of the act and thus, under the doctrine of *stare decisis,* a binding precedent of reaction and Nineteenth Century barbarism for any who would test out any other state workmen's compensation law in the future, whereas a rehearing and subsequent granting of our writ in conformity with the California decision would stop all such possible litigation dead in its tracks, because the Supreme Court of our nation would then have spoken LOUD and CLEAR and it would have put its stamp of liberalism on every state law on the subject, including California's, so as to make its decision in this case the guiding light in the day-to-day enforcement of every workmen's compensation law in the nation, so that they will grind out JUSTICE and INSURED COMPENSATION instead of CREATING poverty all over the land by throwing the industrially injured, and their dependents, onto relief. Thus can our beloved Supreme Court IMPLEMENT, *at the judicial level,* my Ombudsman motto of "AN OUNCE OF PREVENTION OF POVERTY IS WORTH A POUND OF ITS CURE" more *efficaciously* and in *larger scope* than could any measure adopted at the legislative or administrative levels, state or federal.

Its decision would thus become one of the greatest, if not the greatest, decision ever rendered by it, and become the beacon light of progress in America toward governmental goals that make democracy work PROPERLY, so that government of, by and for the people shall not perish from the earth.

The intervening decision of California's highest court is the most clarifying and illuminating that has been handed down by that high court in this workmen's compensation field in the 33 years since it wrote the *Tanenbaum* decision (*Tanenbaum v. Industrial Accident Commission,* 4 Cal. 2nd 615, 617-8, 1935, the essential portion of which is set forth on Pages 18 and 19 of our REPLY BRIEF), which features and the basic rules laid down therein of (1) "INDUSTRY TAKES THE WORKMAN AS IT FINDS HIM", (2) "compensation is NOT to be denied merely because the *workman's physical condition* was such as to cause him to suffer a disability from an injury which *ordinarily,* given a *STRONGER* and HEALTHIER constitution, would have caused *little* or *no inconvenience*", and (3) "there is NO AUTHORITY for PRORATING the extent of disability due to the accident itself on the one hand and that due to the aggravation caused by the employee's physical condition on the other", have been the polar star of workmen's compensation ever since.

This polar star was dimmed when, in conformity with the administrative policy laid down in the press release of July 14, 1967, set forth in EXHIBIT A of our REPLY BRIEF, the respondent board denied

Granado *one-half* relief and *Moreali* ALL relief thereunder on the premise that there could be *"apportionment of temporary disability"*.

Comes now this landmark decision in *Granado* to the effect that this is NOT PROPER, which dispels all the darkness in this field, all the haze in front of the polar star of *Tanenbaum*. It illuminates all dark corners in the house of industrial disability, all gray areas, and puts everything in proper perspective, and for all time to come in California. The victory for progress and liberality in California's most sacred portion of the human rights structure—its LIVING room—is complete, the crusade of your Ombudsman for the objectives attained is ended, except for the mopping up operation in this case and the Wendell Phillips exhortation that *"Eternal vigilance is the price of liberty"*, which spells out the need of the legislative amendment set forth in our "EXHIBIT D" of our REPLY BRIEF (that in EXHIBIT C having been attained by *Granado*) so as to keep the enforcement liberal at the *administrative* level in order that it may be *meaningful* in ALL the hundreds of thousands of day-to-day cases, *not just those appealed to the courts.*

THE FRUITS OF VICTORY SHOULD FALL TO MOREALI

All this leaves Joe Moreali as the *step-child* of workmen's compensation as it exists today in perfected form by virtue of the *Granado* decision. He alone, of the 7,000,000 workers in California, must

eat the bitter fruits of Nineteenth Century justice that turns back the clock to the human industrial scrap-heaps we had at the turn of the century, before our 1911 and 1918 Amendments to our Constitution that guaranteed insured compensation to ALL injured in industry.

To Joe Moreali alone those sacred amendments and the Workmen's Compensation Law, enacted pursuant thereto are absolutely meaningless. They help him not one whit and may as well be repealed as far as he is concerned unless the fruits of victory in the *Granado* case fall into his lap too, in addition to the other 6,999,999 in his group segment of our California population.

WHY? WHY? WHY?

Surely such a statement from one in the best position in California to know as having written the original draft of the bill Hiram Johnson got through as Governor and every Amendment to it in the two-decade period of 1918-1938 when he was with the State, as well as testing out every phase of it in the quarter-century just past in the courts and before the administrative body, demands great big "*WHY*" to get Joe Moreali's case in proper perspective before this Honorable Court.

The reasons, or rather, the lack of reasons, for his denial of justice under the Act and under the Constitutional Amendments which spawned it are *accentuated* by this landmark *Granado* decision just ren-

dered by the Supreme Court of California, and of which he is entitled to the windfall benefits since he happens to have come within the 25-day rule that not only *permits* it but MANDATES it *after* the Supreme Court of the State involved has *spoken* on the sole points at issue.

Moreali was denied the sacraments of the Constitution and the communion of the Act, not because of anything he did wrong to disqualify him and his family from enjoying its benefits, but because of the NOW OUTLAWED attempt to deny the benefits of the act to those not in prime physical condition by saying that *temporary* disability *could be apportioned* so as to apportion him out of court with a ZERO percentage of industrial disability on the basis of the ONLY medical evidence in the case given by the *only two doctors* involved, which is that found on Page 44 of our Petition of the consolidated report of Dr. Giampaoli as follows:

> "It was certainly obvious that this man had a bunion or more technically hallus valgus of the left foot. I am positive that it is strictly developmental in nature. However, I have been seeing Mr. Moreali for *five and one-half years at relatively frequent intervals* and I do not recall that he has *ever complained of any discomfort of his left foot.* After having *bumped the foot* he had, and I *quote* from DR. JOSEPHSON'S report, 'IMMEDIATE SWELLING AND A GREAT DEAL OF PAIN. THERE SEEMED TO BE AN INCREASE OF FLUID WITHIN THE JOINT.' It is *obvious* from the *history alone* that the injury AGGRAVATED his pre-existing de-

> fect and therefore it is hard for me to see how this injury CAN BE ANYTHING OTHER THAN INDUSTRIAL." (Emphasis added.)

This consolidated report tells the WHOLE STORY now that our Supreme Court has outlawed the attempted proration or apportionment between the industrial injury and the preexisting condition. There is nothing that can be added to detract from THESE SIMPLE FACTS OF INJURY that was ruled industrial by the referee and respondent board. The FACTS speak for themselves under the *new ruling* of our State court and certainly the LEGAL CONCLUSION that the opposing doctor drew *from them*, that the operation that followed to enable the injured worker *to put his shoe on* and *go back to the work* was *non-industrial* and that the "question of trauma lighting up his particular condition" was not to enter into the picture (see his report, or self-proclaimed "decision", on Page 18 of our Petition), was OUTLAWED by the NEW RULING of our State's high court that such *"lighting up"* MUST be considered and must be considered binding since there can be no prorating or apportionment of *temporary disability* under it, in other words, the injury becomes automatically industrial once the LIGHTING UP was proved, as it was here, which makes EVERYTHING ELSE in the case IRRELEVANT, INCOMPETENT and IMMATERIAL under this now IRONCLAD rule emanating from our State Supreme Court since this matter was submitted, which thereby becomes binding upon this High Court under the doctrine of

Richfield Oil Corporation case discussed above and quoted on Page 6 of our Petition. So simplified has this case become under this new ruling of our State's highest court, and we can but ask that this Honorable Court respect its decision and implement it under the Federal rule by granting our PETITION FOR RE-HEARING on the basis thereof.

For this High Court's reference in this regard the paragraph in the State's high court decision which makes such a granting mandatory under Federal rulings, reads as follows:

> "In view of the ambiguity in the statute, the rule of liberal construction, the delays which will necessarily result if temporary disability is made apportionable, the resulting frustration of the legislative policy of making temporary disability a substitute for lost wages, and our public policy of expeditious payment, WE CONCLUDE THAT TEMPORARY DISABILITY IS NOT APPORTIONABLE." (Page 415 of the decision —Emphasis added.)

This rule was NOT applied to *Joe Moreali*. He is a citizen on a basis of equality with *Henry Granado* under the "EQUAL JUSTICE UNDER LAW" fundamental motto of the United States Supreme Court. He is *entitled* to that EQUALITY under the 25-day rule and we respectfully submit that a denial of that equality would be a violation of the Constitution of the United States by the Supreme Court itself.

STATE SUPREME COURT IN INTERVENING LANDMARK DECISION OPENS UP OTHER AVENUES OF RELIEF FROM THE "PETITION DENIED"

The intervening decision of the California Supreme Court in the *Granado* landmark case opens up another avenue of approach to the basic problem here involved which comes under both phases of Rule 58 so as to entitle your Petitioner to relief by way of Rehearing, which avenue is two-pronged, one that the Board *failed to state the evidence* on which it relied, which was NON-EXISTENT in that instant case, so as to make it IMPOSSIBLE to state it, and the other that a LEGAL CONCLUSION *cannot be substituted for such evidence.*

The exact language of the Court as to these new grounds, brought into the *Granado* case on the Court's *own initiative,* so as to be *unanticipatory,* is as follows:

> "The decision must be annulled for another reason.
>
> "The board in any decision on reconsideration altering or amending an order or award is required to state the evidence relied upon and specify *in detail* the *reasons* for that decision in order to *assist the reviewing court* in ascertaining the *principles relied* upon by the board, to help the board *avoid* CARELESS or ARBITRARY action, and to make the right of review MEANINGFUL. (*Labor Code,* Section 5908.5; *Evans v. Workmen's Compensation Appeals Board,* 68 Cal. 2d 791, 793 (68 Cal. Rep. 825, 441 P. 2d 633.)
>
> "In ordering apportionment, the board relied upon the evidence before it generally and the report of Dr. Robert R. McIvor. . . .

"The general statement of the board that it relies upon the evidence before it does not comply with the requirements of Section 5908.5 of the Labor Code and must be disregarded. In none of Dr. McIvor's reports does he state that the disability or any part of it is due to the normal progress of the preexisting injury. (*Zemke v. Workmen's Comp. App. Bd., supra,* 68 Cal. 2d 835, 840, et seq.; *Berry v. Workmen's Comp. App. Bd., supra,* 68 Cal. 2d 829, 831 et seq.)

"The decision of the Workmen's Compensation Board is annulled." (Emphasis added.)

The full wording of the Labor Code section relied upon by the Court, which makes the section applicable to the case here at issue, is as follows:

"Section 5908.5. Any decision of the appeals board *granting or denying a petition for reconsideration or affirming,* rescinding, altering, or amending the original findings, order, decision, or award following reconsideration shall be made by the appeals board and not by a referee and shall be in writing, signed by a majority of the appeals board members assigned thereto, and shall state the evidence relied upon and specify in detail the reasons for the decision." (Emphasis added.)

The entire difficulty in this case is due to the Board's violation of this section and the rules laid down in this new case of *Granado* implementing it. It could not have complied with the law's mandate or the Court's directive since it had ABSOLUTELY no evidence on which it could rely and to have stated that it was intentionally ignoring as the "deciding" doctor whose "decision" it approved, did, the basic

"industry takes the workman as it finds him" and "lighting up" rules would have brought the instant condemnation of the courts and a "decision annulled" ruling.

Instead of thus enlightening or "assisting the reviewing court in ascertaining the PRINCIPLES relied upon by the board, to help the board avoid CARELESS or ARBITRARY action and to make the *right of review* MEANINGFUL", it is stated, in so many words, that it was intentionally *disregarding* ALL the *evidence* in the case as the "*question* is an ESOTERIC one, SOLELY to be *answered* by an *expert* and NOT a *question of fact finding*". (See BOARD ORDER DENYING RECONSIDERATION on Page 13 of our Petition and REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION on Page 14 thereof.)

Surely, under the circumstances of the spelled out in black and white reasoning of the Board that it was turning its decision-making function over to the doctor for his "SOLE" decision on "ESOTERIC" material only, followed by the doctor's admission that his decision was a "GUESS" only, even though an "*educated*" one, but one which he could not make without "ASSUMING SUFFICIENT OMNIPOTENCE" and, in making it, did not even consider the question of *trauma* LIGHTING UP his particular condition" (See Page 18 of Petition for these unbelievable exact words), can but condemn that "decision" as a "LEGAL CONCLUSION" on the part of a doctor untrained in the law and thus incompetent to make a

"DECISION" on a point of law as required by *Tanenbaum* as to its "lighting up" feature and as required by this new epochal ruling of *Granado* that BARS the *prorating* or *apportionment* the doctor made of "*one hundred per cent NON-industrial,* even though he admitted in his written report that, after the Board-ruled industrial trauma, there was "IMMEDIATE SWELLING and a GREAT DEAL OF PAIN. There seemed to be an INCREASE OF FLUID WITHIN THE JOINT". This quotation is from his report by Dr. Giampaoli, who correctly ruled therefrom that this "LIGHTING UP" made the injury *industrial,* but whose ruling was too legalistic for the Board which was not looking for a factual conclusion based on the *evidence,* which it was by law, reinforced by this new *Granado* decision, bound to do, but on an ESOTERIC legal conclusion based solely on ASSUMED OMNIPOTENCE and not the fact of a 13-year totally quiescent and totally asymptomatic bunion, that had not caused one provable minute's loss of work in that almost decade and a half, being lit up and activated into a disabling injury, which activation got so bad within the space of a month that he couldn't even put his shoe on much less work on the painful foot, which is the very thing this new *Granado* decision INTERDICTS the *proration* of and MANDATES the *FULL* compensability of on the three grounds above stated of "no *proration* or *apportionment* of *temporary* disability", *guidelines* for the courts, including our highest, in reviewing board decisions and no decisions based on *"legal conclusions".*

All three of these new criteria of board conduct were violated in the instant case and we therefore respectfully contend that, being within the 25-day rule to benefit by a State court decision declaring the meaning of the state statute, and which construction has the force of law and is binding on this High Court under the doctrine of *Richfield* (*supra*), we should have our PETITION FOR REHEARING granted on at least one or more if not all three of the new grounds opened up to us by the State's highest court's construction of rights of industrially injured workers in a case which spanned all three points here at issue.

A fourth point is also brought out in the *Granado* case which is germane here, that of *mandated* LIBERAL CONSTRUCTION of the statute here under review. Its language in this regard is as follows:

> "The legislative COMMAND is that workmen's compensation laws shall be *liberally construed* 'with the purpose of *extending their benefits* for the *protection* of *persons injured* in the course of their employment.' (Labor Code, Section 3202.) here provisions of such laws are susceptible of an interpretation either beneficial or detrimental to injured employees or an ambiguity appears, they MUST be construed favorably to the employees. (E.g., *Colonial Ins. Co. v. Industrial Acc. Com.*, 27 Cal. 2d 437, 442 (164 P. 2d 490.)" (Emphasis added.)

This liberal construction is therefore mandatory upon this High Court under the *Richfield* decision. This construction we have not had in the instant case

in spite of the recognized liberality of this Honorable Court, Attorney General Ramsey Clark going so far as to say over the air recently that it is the "one institution that has moved UNFALTERINGLY toward equal justice for all". *As matters stand today this is no longer true.* It *"faltered"* on *Moreali,* and as a result millions of workmen all over the nation standing on his guinea-pig feet will be adversely affected in one of their most precious rights—the right to the necessities of life itself while industrially disabled—for themselves and their loved ones, for the very situation your Ombudsman expressed a fear of on Pages 24 and 25 of our REPLY BRIEF has actually come to pass, wherein the State Court, in terms of liberality, has set aside a comparable Board decision on the four basic grounds mentioned above and our nation's highest court has *upheld* REACTION and *turned back the hands of the clock* to the NINETEENTH CENTURY in this most vital area of the structure of human rights—its LIVING room —so as to throw Joe Moreali and the millions of workers he represents in this test case, onto the human industrial scrap heaps we humanitarians of the Hiram Johnson era thought we had abolished forever in California, and their dependents onto State Aid to Needy Disabled, State Aid to Needy Children and other forms of public charity, so as to CREATE, by binding court edict of the highest court of our nation, the very poverty its citizens are trying to abolish.

TIME TO CONVERT GRAVE ERROR INTO PROGRESS FOR HUMAN RIGHTS

There is yet time to correct this grave injustice, this denial of equal protection, this denial of due process, and put the highest court of the nation in conformity with the highest court of the state in which this litigation arose, so that it will not end with overruling of the State's salutary decision which it will, in effect, do if if tears up its decision in the *Richfield* case and defies the *four* rulings of the State's highest court that decision makes binding on it. That would leave the laws NATIONALLY under a *cloud of doubt,* with textbook writers and commentators *arguing* as to the exact state of the law on this vital subject that affects the daily lives of millions of men and women, whereas a decision *in conformity with* the four finding rules enunciated by the State Supreme Court in the field will SET ALL DOUBT AT REST and stabilize the law not only for California but for *all the nation* in this first case of real import ever to come before this High Court in this vital field of human rights, in which it cannot afford to "FALTER", since the decision will be indelible and its impact will be felt by generations yet unborn, who may have to relitigate this entire matter to resolve the doubt if this Honorable Court takes a reactionary stand and slaps our liberal California Court in the face in a binding precedent that cannot be erased from the decision records and will be available to any reactionary who might want to bend a state law in

this field toward regression of human rights, as the Respondent Board did in California and got away with it (so far) in *Moreali* but was stopped dead in its tracks in *Granado* because we have a 6 to 1 liberal Supreme Court. The CHALLENGE OF THE DAY is therefore to a liberal United States Supreme Court (that may not always remain so) as to whether it will *negate* liberality in California, and thus throughout America in the unborn litigation it will encourage to clarify its ambiguous "REHEARING DENIED" stand, or will take up the torch for human rights in this bread-and-butter branch of it that gives people the right to LIVE, just as it has in less vital branches of it, and write in noble words of meaningful grandeur the rights of man to existence, with his loved ones, when industrial injury strikes, by a decision that will prevent the breakdown of workmen's compensation in any state of the Union, just as our beloved Supreme Court in California has done in preventing the breakdown of our precious law by an affirmation which the Supreme Court of this nation can amplify into a re-affirmation that can make the doctrines of its newest landmark case the law of the entire land, without question, without effort, without years of agitation and litigation to further congest court calendars, in one fell swoop of encompassing effect, that will make my work as the nation's unpaid and unofficial Ombudsman (who has spent $2,000.00 of his borrowed money and $6,000.00 of his borrowed time in bringing this case to the very peak of judicial pro-

cedure in America because of its importance to each of its 200,000,000 citizens) lighter by a victory gained for the entire nation, so that I can devote my limited time on earth at 75 to other fields that need plowing to produce a harvest for America's people, such as the disability insurance field, the field of simplification of court procedure and of our basic crime statutes, abolition of the bail evil and abolition of the animal rule of "preponderance of evidence" for children, by legislation and by other *Gault* cases and other *Moreali* cases that I will lay on the doorstep of our highest court if found necessary, as it was in this *Moreali* case when my own Supreme Court turned me down for some mysterious reason and I had to apply here for relief. I plead for this relief on bended knee, as deserved, as mandatory and as Constitution-violating if it fails to come. May I start my seventh nation-wide tour as America's Ombudsman on the first of the year (beginning with the California law schools) on an affirmative stance of one big battle for human rights won and only 13 to go as I attempt to spur these law students on to crusading vigor to give "increased devotion to the great unfinished task remaining before us" of making democracy work PROPERLY, as it will, *perfectly,* in the field before this Honorable Court if it will but give its "AMEN" to the most important decision in it in 33 years and that could be this Honorable Court's most important ever rendered on human rights? Only the 9 Justices of this Honorable Court have the answer to this question. May it be in favor of the people of America I seek to serve and

not a heartless "REHEARING DENIED" that will defy description in its devastating effect.

Dated, San Francisco, California,
October 30, 1968.

Respectfully submitted,

ARTHUR L. JOHNSON,

Attorney for Petitioner, and as amicus curiae, America's Unofficial and Uncompensated Ombudsman, Lincoln's Chief Aide in Making Democracy Work PROPERLY, Candle Lighter, Torch Bearer and Champion of Justice and Scientific and Economical Government With a Heart, and, in all these capacities, representing all of the 200,000,000 people of the nation, who will be irreparably damaged in this group test case on behalf of humanity in general unless a Rehearing is granted herein.

CERTIFICATE OF COUNSEL

I hereby certify that this PETITION FOR REHEARING in the case of Joseph I. Moreali v. Workmen's Compensation Appeals Board, No. 274, is presented in good faith and not for delay, and that it is restricted to the two grounds specified for petitions for rehearing of orders on petitions for writs of certiorari under Paragraph 2 of Rule 58 of this Honorable Court.

ARTHUR L. JOHNSON,
Attorney for Petitioner.